TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~509.~~

PETER F. HOLDEN, APPELLANT,

vs.

JAMES F. JOY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED OCTOBER 26, 1871.

SUPREME COURT OF THE UNITED STATES.

No. 589.

PETER F. HOLDEN, APPELLANT,

vs.

JAMES F. JOY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

INDEX.

	Original.	Print.
Bill	1	1
Exhibit "A"	13	4
"B"	54	15
"C"	64	18
"D"	74	21
"E"	84	24
"F"	97	28
"G"	99	29
"H"	164	51
Demurrer to bill	175	54
Demurrer sustained	176	54
Bill dismissed	176	54
Appeal allowed, and bond waived	177	54
Certificate	178	55

1 Pleas before the Hon. Samuel F. Miller and Hon. Jno. F. Dillon, judges of the circuit court of the United States for the district of Kansas, begun and held at Topeka, in said district, on Monday, the 22nd day of May, A. D. 1871.

PETER J. HOLDEN, COMPLAINANT,
vs.
JAMES F. JOY, DEFENDANT. } 384.

Be it remembered that, on the 26th day of May, 1871, came the said complainant, by his solicitors, McComas & McKeighan, and filed in the clerk's office of said court his bill of injunction in the above-entitled cause; which bill is in words and figures following, to wit:

UNITED STATES OF AMERICA,
In the District of Kansas, ss :

To the judges of the circuit court of the United States for the district of Kansas:

Peter F. Holden, a resident of Crawford County, State of Kan-
2 sas, and a citizen of the State of Kansas, brings this his bill against James F. Joy, who is a resident of the city of Detroit, and State of Michigan, and is a citizen of the State of Michigan.

And thereupon your orator complains of the said James F. Joy and says that the said James F. Joy claims to have the legal title to the following lands, to wit: The southeast (S. E. ¼) quarter of sec. seventeen, (17,) township thirty-one (31) north, of range twenty-five (25) east of the 6 principal meridian, said land being situated in the said county of Crawford, and State of Kansas; that the said James F. Joy claims to own the said land under and by a patent issued to him on the 31st day of October, 1868, a certified copy of which patent is herewith filed, marked Exhibit "H," and made part of this bill; that the said patent was issued under the pretended authority of the 17 article of the pretended treaty, made between the United States and the Cherokee Nation or tribe of Indians, in the year, 1866, and the supplemental article thereto, proclaimed in 1868. Said treaty of 1866 was
3 concluded July 19th, 1866; ratification, advised, with amendments, July 27th, 1866; amendments accepted July 31st, 1866; treaty proclaimed August 11th, 1866. The said supplemental article was concluded April the 21, 1868; ratification advised June the 6th, 1868; proclaimed June the 10th, 1868. For convenience of reference printed copies of the said treaty, and the supplemental article thereto, are hereto attached and herewith *with* filed, marked Exhibits "A" & "B," respectively, and prayed to be taken and considered as part of this bill; that, at the time of the making of the said treaty and supplemental article thereto, and for a period long prior thereto, the Cherokee Nation of Indians had ceased to occupy the lands mentioned and described in said treaty and had abandoned the said lands, by reason whereof the title of the said tribe of Indians had then, and had long prior thereto, reverted to the United States.

And your orator further avers that, on the 30th day of August, 1866, one James Harlin, then Secretary of the Department of the Interior, fraudulently conspired with the officers and members of the American Emigration Company, a company incorporated by an act of the
4 legislature of the State of Connecticut, to sell 800,000 acres of the said land to the said company in violation of the terms of the said

treaty of 1866, for the purpose of defrauding said Cherokee Indians, and preventing the same from being settled upon and purchased under the pre-emption laws of the United States. A printed copy of the said contract of sale is hereto attached and herewith filed, marked Exhibit "C," and prayed to be taken as part of this bill.

And your orator further shows that, before the said treaty by & between the United States and the said Cherokee Nation or tribe of Indians, proclaimed August the 11th, 1866, the said Indians had made a treaty, offensive and defensive, with the so-called Confederate States of America, by which said Indians abandoned their occupation of this land and ceded it to the said Confederate States for the sum of five hundred thousand dollars; one hundred and fifty thousand was paid down, in cash, and the balance to be paid at the conclusion of
5 the peace between the United States and said confederacy. Said treaty was made Oct. 7th, 1861. A printed copy of said treaty is herewith filed, marked Exhibit "G," and made part of this bill.

And your orator further avers and shows to the court that, on the 16th day of June, 1866, the defendant procured an assignment of the contract between Sec't'y Harlin & the said emigrant company to him.

And your orator further shows that, on the 8th day of June, 1868, the said defendant entered into another contract with the then Secretary of the Interior, by which it was stipulated that the said defendant was to purchase said lands, according to the said contract made with the Sec't'y of the Interior and assigned to the defendant, subject to slight modifications in respect to the time of payment, which fully appears in said contract. A genuine copy of said contract between the Secretary of the Interior and this defendant is hereto attached & herewith filed, marked Exhibit "D," and made part of this bill.

Your orator avers that it was under this last-mentioned con-
6 tract that the patent was issued to the defendant under which he claims this land.

And your orator shows to the court that the land herein mentioned is a part of a tract of (800,000) eight hundred thousand acres, conveyed to the Cherokee tribe of Indians, by patent of the date dated December the 28th, 1838, issued to them by the President of the United States; a certified copy said patent being herewith filed, marked Exhibit E, and prayed to be taken and considered as part of this bill.

That the said patent was issued under the authority of a treaty made with the Cherokee Nation or tribe of Indians on the 19th day of December, 1835; the said treaty being the same treaty that is published by authority of the United States. (U. S. Statutes at Large, vol. 7, page 478.)

And your orator further avers that there was no other authority of law for the issuing of the patent to the said defendant, to the said land herein described than is to be found in the said patents, treaties, and contracts hereinbefore mentioned.

7 And your orator further shows that, on the 12th day of February, 1867, the said land was public land belonging to the Government of the United States, to which the Indian title before that time had been extinguished, and your orator, having the qualifications of a pre-emptor, then & on that day settled upon said land & took possession of the same; and that your orator has acquired the legal and equitable right to enter the same at the proper land office, under the pre-emption laws of the United States; that your orator then made settlement on said land for the purpose of entering it under the said laws, and then had, and

has ever since had, and now has, open, notorious, adverse, exclusive, & rightful possession of the same.

And your orator avers that, at the time he took possession of said land the tribe of Cherokee Indians did not live, and have not since lived, within the State of Kansas; that no individual Indian of the said tribe lived on or near the said land, and that this tract of land was
8 never settled upon by any person until it was taken possession of by your orator.

That your orator took possession of the said land at the time aforesaid and has continued to occupy it up to this date without any objection from the said tribe of Cherokee Indians or any member thereof.

And your orator further shows that he is the head of a family and citizen of the United States; that he is not the owner of three hundred and twenty acres of land in any other State or Territory of the United States, nor has he settled on and improved this land for the purpose of speculation but in good faith to appropriate it to his own exclusive use and benefit; that he has not, directly or indirectly, made any contract or agreement, in any way or manner, with any persons whatever, by which the title he may acquire will enure, in whole or in part, to any person except himself.

And your orator further shows to the court that, since he so settled upon the said land, for the purposes aforesaid, he has erected a dwelling-house thereon and made other lasting and valuable improvements
9 of the aggregate value of twenty-five hundred dollars; that he has not heretofore had any pre-emption right; that he did not at any time quit or abandon a residence on other land to reside upon this; that said land is not included in any Indian reservation by treaty, law, or proclamation of the President of the United States, nor reserved for saline or mineral land, nor for any other purpose, and is not section alternate to any section granted to any State for the construction of any canal, railroad, or other improvement, nor included in any incorporated town or site selected for such town.

And your orator further shows to the court that there was no public survey of the said land returned to and approved by the Commissioner of the General Land Office, until the 8th day of June, 1867, and that no plat or survey of the said lands, made by authority of the United States, has ever been returned to the office of the register & receiver of the local land district in which said land is situated, or to the office of the surveyor general for said district, but that the only record
10 of said survey is in the office of the Commissioner of the General Land Office at Washington City, and no instructions have ever been given to the register and receiver respecting this land by the Secretary of the Interior.

And your orator further shows that he has been ready and willing at all times to make proof before the register and receiver of his settlement and improvement upon said land, and to pay therefor the price of one dollar and twenty-five cents per acre, and has tendered such proof, and payment, but the said register and receiver and each o' them have refused at all times to take such evidence and receive pay for said land. And your orator now makes said oath before an officer authorized by law, to administer the same, and tenders the same to the said register and receiver, and *and* to the Government of the United States, and also makes tender of two hundred dollars, the price of said lands, and offers to pay the same as the court shall direct, said pre-emptor's oath being hereto attached, marked Exhibit "F."

11 And your orator claims and avers that, by reason of his said

settlement and improvement upon said lands, the right has accrued to your orator to enter said lands under the pre-emption law of the United States.

And your orator further shows and alleges that the defendant has commenced an action of ejectment against him on the common-law side of this court for the purpose of ejecting him from said land. In consideration whereof your orator prays that the said defendant, and his attorneys and counsellors at law, be restrained by an injunction issuing out of this court, from proceeding further against him in the said action of ejectment. Your orator further prays that the said defendant may be compelled to disclose the interest he has in this land adverse to your orator, and that the court may determine the nature and character of such interest; that the court will by proper decree quiet the possession of your orator to said premises, and that your orator may have such further and other relief, in the premises as may be equitable and just.

Therefore will your honors grant unto your orator the writ of
12 subpœna issuing out of and under the seal of this court to be directed to the said defendant, James F. Joy, commanding him on a certain day therein named, under a certain penalty, &c., to appear before your honors, and answer this bill and abide the decree of the court.

McCOMAS & McKEEGHAN,
Sol's for Complainant.

(Endorsed:) No. 384. U. S. circuit c't, district of Kansas. Peter J. Holden vs. James F. Joy. Bill for injunction. Filed May 26, 1871. A. S. Thomas, clerk.

13 EXHIBIT "A."

Treaty between the United States and the Cherokee Nation of Indians, concluded July 19, 1866; *ratification advised, with amendments, July* 27, 1866; *amendments accepted July* 31, 1866; *proclaimed August* 11, 1866.

14 Andrew Johnson, President of the United States of America, to all and singular to whom these presents shall come, greeting:

Whereas a treaty was made and concluded at the city of Washington, in the district of Columbia, on the nineteenth day of July, in the year of our Lord one thousand eight hundred and sixty-six, by and between Dennis N. Cooley and Elijah Sells, commissioners on the part of the United States, and Smith Christie, White Catcher, James McDaniel, S. A. Benge, Daniel H. Ross, and J. B. Jones, delegates of the Cherokee Nation, appointed by resolution of the national council, on the part of said Cherokee Nation, which treaty is in the words and figures following, to wit:

Articles of agreement and convention at the city of Washington,
15 on the nineteenth day of July, in the year of our Lord one thousand eight hundred and sixty-six, between the United States, represented by Dennis N. Cooley, commissioner of Indian affairs, [and] Elijah Sells, superintendent of Indian affairs for the southern superintendency, and the Cherokee Nation of Indians, represented by its delegates, James McDaniel, Smith Christie, White Catcher, S. H. Benge, J. B. Jones, and Daniel H. Ross—John Ross, principal chief of the Cherokees, being too unwell to join in these negotiations.

PREAMBLE.

Whereas existing treaties between the United States and the Cherokee Nation are deemed to be insufficient, the said contracting parties agree as follows, viz:

ARTICLE 1. The pretended treaty made with the so-called Confederate States by the Cherokee Nation on the seventh day of October, 1861, and repudiated by the national council of the Cherokee
16 Nation, on the 18th day of February, 1863, is hereby declared to be void.

ARTICLE 2. Amnesty is hereby declared by the United States, and the Cherokee Nation for all crimes and misdemeanors committed by one Cherokee on the person or property of another Cherokee, or of a citizen of the United States, prior to the 4th day of July, 1866, and no right of action arising out of wrongs committed in aid or in the suppression of the rebellion shall be prosecuted or maintained in the courts of the United States or in the courts of the Cherokee Nation.

ARTICLE 3. The confiscation laws of the Cherokee Nation shall be repealed, and the same and all sales of farms, and improvements on real estate, made or pretended to be made in pursuance thereof, are hereby agreed and declared to be null and void, and the former owners of such property so sold, their heirs or assigns, shall have the
17 right peaceably to reoccupy their homes, and the purchaser under the confiscation laws, or his heirs or assigns, shall be repaid by the treasurer of the Cherokee Nation from the national funds, the money paid for said property and the cost of permanent improvements on such real estate, made thereon since the confiscation sale; the cost of such improvements to be fixed by a commission, to be composed of one person designated by the Secretary of the Interior, and one by the principal chief of the nation, which two may appoint a third in cases of disagreement, which cost so fixed shall be refunded to the national treasurer by the returning Cherokees within three years from the ratifiation hereof.

ARTICLE 4. All the Cherokees and freed persons who were formerly slaves to any Cherokee, and all free negroes not having been such slaves, who resided in the Cherokee Nation prior to June 1st, 1861, who may, within two years, elect not to reside northeast of the Arkansas
18 River and southeast of Grand River, shall have the right to settle in and occupy the Canadian district, southwest of the Arkansas River, and also all that tract of country lying northwest of Grand River, and bounded on the southeast by Grand River and west by the Creek reservation, to the northeast corner thereof; from thence west, on the north line of the Creek reservation, to the ninety-sixth degree of west longitude; and thence north, on the said line of longitude, so far that a line due east from Grand River will include a quantity of land equal to 160 acres for each person who may so elect to reside in the territory above described in this article: *Provided*, That that part of said district north of the Arkansas River shall not be set apart until it shall be found that the Canadian district is not sufficiently large to allow one hundred and sixty acres to each person desiring to obtain settlement under the provisions of this article.

ARTICLE 5. The inhabitants electing to reside in the district
19 described in the preceding article shall have the right to elect all their local officers and judges, and the number of delegates to which, by their numbers, they may be entitled in any general council to be established in the Indian Territory, under the provisions of this

treaty as stated in Article 12; and to control all their local affairs, and to establish all necessary police regulations and rules for the administration of justice in said district not inconsistent with the constitution of the Cherokee Nation or the laws of the United States: *Provided*, The Cherokees residing in said district shall enjoy all the rights and privileges of other Cherokees who may elect to settle in said district as hereinbefore provided, and shall hold the same rights and privileges, and be subject to the same liabilities as those who elect to settle in said district under the provisions of this treaty: *Provided also*, That if any such police regulations or rules be adopted which, in the opinion of the President, bear oppressively on any citizen of the nation, he may suspend the same. And all rules or regulations in said district, or any other district of the nation, discriminating against the citizens of other districts, are prohibited, and shall be void.

ARTICLE 6. The inhabitants of the said district hereinbefore described shall be entitled to representation according to numbers in the national council, and all laws of the Cherokee Nation shall be uniform throughout said nation; and should any such law, either in its provisions or in the manner of its enforcement, in the opinion of the President of the United States, operate unjustly or injuriously in said district, he is hereby authorized and empowered to correct such evil, and to adopt the means necessary to secure the impartial administration of justice, as well as a fair and equitable application and expenditure of the national funds as between the people of this and of every other district in said nation.

ARTICLE 7. The United States court to be created in the Indian Territory; and until such court is created therein, the United States district court nearest to the Cherokee Nation shall have exclusive original jurisdiction of all causes, civil and criminal, wherein an inhabitant of the district hereinbefore described shall be a party; and where an inhabitant outside of said district, in the Cherokee Nation, shall be the other party, as plaintiff or defendant, in a civil cause, or shall be defendant or prosecutor in a criminal case, and all process issued in said district by any officer of the Cherokee Nation, to be executed on an inhabitant residing outside of said district, and all process issued by any officer of the Cherokee Nation outside of said district to be executed on an inhabitant residing in said district, shall be, to all intents and purposes, null and void, unless endorsed by the district judge for the district where such process is to be served; and said person so arrested shall be held in custody by the officer so arresting him until he shall be delivered over to the United States marshal, or consent to be tried by the Cherokee court: *Provided*, That any or all the provisions of this treaty which make any distinction in rights and remedies between the citizens of any district and the citizens of the rest of the nation shall be abrogated whenever the President shall have ascertained, by an election duly ordered by him, that a majority of the voters of such district desire them to be abrogated, and he shall have declared such *such* abrogation: *And provided further*, That no law or regulation to be hereafter enacted within said Cherokee Nation, or any district thereof, prescribing a penalty for its violation shall take effect or be enforced until after 90 days from the date of its promulgation, either by publication in one or more newspapers of general circulation in said Cherokee Nation, or by posting up copies thereof, in the Cherokee and English languages in each district where the same is to take effect, at the usual place of holding district courts.

ARTICLE 8. No license to trade in goods, wares, or merchandise

23 *merchandise* shall be granted by the United States to trade in the Cherokee Nation, unless approved by the Cherokee national council, except in the Canadian district and such other district north of Arkansas River and west of Grand River, occupied by the so-called Southern Cherokees, as provided in Article 4 of this treaty.

ARTICLE 9. The Cherokee Nation, having voluntarily, in February, 1863, by an act of their national council, forever abolished slavery, hereby covenant and agree that never hereafter shall either slavery or involuntary servitude exist in their nation, otherwise than in the punishment of crime, whereof the party shall have been duly convicted in accordance with laws applicable to all the members of said tribe alike. They further agree that all freedmen who have been liberated by voluntary act of their former owners, or by law, as well as all free colored persons who were in the country at the commencement of the rebellion

24 and are now residents therein, or who may return within six months, and their de'cendants shall have all the rights of native Cherokees; *Provided*, That owners of slaves so emancipated in the Cherokee Nation shall never receive any compensation or pay for the slaves so emancipated.

ARTICLE 10. Every Cherokee and freed person resident in the Cherokee Nation shall have the right to sell any products of his farm, including his or her live-stock, or any merchandise or manufactured products, and to ship and drive the same to market without restraint, paying any tax thereon which is now or may be levied by the United States on the quantity sold outside of the Indian Territory.

ARTICLE 11. The Cherokee Nation hereby grant a right of way not exceeding two hundred feet wide, except at stations, switches, water stations, or crossing of rivers, where more may be indis-

25 pensable to the full enjoyment of the franchise herein granted, and then only two hundred additional feet shall be taken, and only for such length as may be absolutely necessary, through all their lands, to any company or corporation which shall be duly authorized by Congress to construct a railroad from any point north to any point south, and from any point east to any point west of, and which may pass through the Cherokee Nation. Said company or corporation and their employees and laborers, while constructing and repairing the same, and in operating said road or roads, including all necessary agents on the line, at stations, switches, water-tanks, and all others necessary to the successful operation of a railroad, shall be protected in the discharge of their duties, and at all times subject to the Indian intercourse laws, now or which may hereafter be enacted or be in force in the Cherokee nation.

26 ARTICLE 12. The Cherokees agree that a general council, consisting of delegates elected by each nation or tribe lawfully residing within the Indian Territory, may be an'ually convened in said Territory, which council shall be organized in such manner and possess such powers as hereinafter prescribed.

First. After the ratification of this treaty and as soon as may be deemed practicable by the Secretary of the Interior, and prior to the first session of said council, a census or enumeration of each tribe lawfully resident in said Territory shall be taken, under the direction of the Commissioner of Indian Affairs, who, for that purpose, is hereby authorized to designate and appoint competent persons, whose compensation shall be fixed by the Secretary of the Interior and paid by the United States.

Second. The first general council shall consist of one member

from each tribe, and an additional member for each one thousand Indians, or each fraction of a thousand greater than five hundred, being members of any tribe lawfully resident in said Territory, and shall be selected by said tribes, respectively, who may assent to the establishment of said general council; and if none should be thus formally selected by any nation or tribe so assenting, the said nation or tribe shall be represented in said general council by the chief or chiefs and head-men of said tribes, to be taken in the order of their rank as recognized in tribal usage, in the same number and proportion as above indicated. After the said census shall have been taken and completed the superintendent of Indian affairs shall publish and declare to each tribe assenting to the establishment of such council the number of members of such council to which they shall be entitled under the provisions of this article, and the persons entitled to represent said tribes shall meet at such time and place as he shall approve; but thereafter the time and place of the sessions of said council shall be determined by its action: *Provided*, That no session in any one year shall exceed the term of thirty days: *And provided*, That special sessions of said council may be called by the Secretary of the Interior whenever, in his judgment, the interests of said tribes shall require such special session.

Third. Said general council shall have power to legislate upon matters pertaining to the intercourse and relations of the Indian tribes and nations, and colonies of freedmen resident in said Territory; the arrest and extradition of criminals and offenders escaping from one tribe to another, or into any community of freedmen; the administration of justice between members of different tribes of said Territory, and persons other than Indians and members of said tribes or nations; and the common defence and safety of the nations of said Territory.

All laws enacted by said council shall take effect at such time as may therein be provided, unless suspended by direction of the President of the United States. No law shall be enacted inconsistent with the Constitution of the United States, or laws of Congress, or existing treaty stipulations with the United States; nor shall said council legislate upon matters other than those above indicated: *Provided, however*, That the legislative power of such general council may be enlarged by the consent of the national council of each nation or tribe assenting to its establishment with the approval of the President of the United States.

Fourth. Said council shall be presided over by such person as may be designated by the Secretary of the Interior.

Fifth. The council shall elect a secretary, whose duty it shall be to keep an accurate record of all the proceedings of said council, and who shall transmit a true copy of all such proceedings, duly certified by the presiding officer of such council, to the Secretary of the Interior, and to each tribe or nation represented in said council, immediately after the sessions of said council shall terminate. He shall be paid out of the Treasury of the United States an annual salary of five hundred dollars.

Sixth. The members of said council shall be paid by the United States the sum of four dollars per diem during the term actually in attendance on the sessions of said council, and at the rate of four dollars for every twenty miles necessarily travelled by them in going from and returning to their homes, respectively, from said council, to be certified by the secretary and president of the said council.

ARTICLE 13. The Cherokees also agree that a court or courts may be

established by the United States in said Territory, with such jurisdiction, and organized in such manner as may be prescribed by law: *Provided*, That the judicial tribunals of the nation shall be allowed to retain exclusive jurisdiction in all civil and criminal cases arising
31 within their country in which members of the nation, by nativity or adoption, shall be the only parties, or where the cause of action shall arise in the Cherokee Nation, except as otherwise provided in this treaty.

ARTICLE 14. The right to the use and occupancy of a quantity of land not exceeding one hundred and sixty acres, to be selected according to legal subdivisions, in one body, and to include their improvements, and not including the improvements of any member of the Cherokee Nation, is hereby granted to every society or denomination which has erected, or which, with the consent of the national council, may hereafter erect buildings within the Cherokee country for missionary or educational purposes; but no land thus granted, nor buildings which have been or may be erected thereon, shall ever be sold or [o]therwise disposed of, except with the consent and approval of the Cherokee national council and of the Secretary of the Interior. And whenever any such lands or buildings shall be sold or disposed of, the proceeds there-
32 of shall be applied by said society or societies for like purposes within said nation, subject to the approval of the Secretary of the Interior.

ARTICLE 15. The United States may settle any civilized Indians, friendly with the Cherokees and adjacent tribes, within the Cherokee country, on unoccupied lands east of 96°, on such terms as may be agreed upon by any such tribe and the Cherokees, subject to the approval of the President of the United States, which shall be consistent with the following provisions, viz: Should any such tribe or band of Indians settling in said country abandon their tribal organization, there being first paid into the Cherokee national fund a sum of money which shall sustain the same proportion to the then existing national fund that the number of Indians sustain to the whole number of Cherokees then residing in the Cherokee country, they shall be incorporated into and ever after remain a part of the Cherokee Nation, on equal terms, in
33 every respect, with native citizens. And should any such tribe thus settling in said country, decide to preserve their tribal organizations and to maintain their tribal laws, customs, and usages, not inconsistent with the constitution and laws of the Cherokee Nation, they shall have a district of country set off for their use, by metes and bounds equal to 160 acres, if they should so decide, for each man, woman, and child of said tribe, and shall pay for the same, into the national fund, such price as may be agreed on by them and the Cherokee Nation, subject to the approval of the President of the United States, and in cases of disagreement, the price to be fixed by the President. And the said tribe thus settled shall also pay into the national fund a sum of money, to be agreed on by the respective parties, not greater in proportion to the whole existing national fund and the probable proceeds of the lands herein ceded or authorized to be ceded or sold than their numbers bear to the whole number of Cherokees then residing in said country,
34 and thence afterwards they shall enjoy all the rights of native Cherokees. But no Indians who have no tribal organizations, or who shall determine to abandon their tribal organizations, shall be permitted to settle east of the 96° of longitude, without the consent of the Cherokee national council, or of a delegation duly appointed by it being first obtained. And no Indians who have and determine to preserve

their tribal organizations, shall be permitted to settle, as herein provided, east of the 96° of longitude without such consent being first obtained, unless the President of the United States, after a full hearing of the objections offered by said council or delegation to such settlement, shall determine that the objections are insufficient, in which case he may authorize the settlement of such tribe east of the 96° of longitude.

ARTICLE 16. The United States may settle friendly Indians in any part of the Cherokee country west of 96°, to be taken in a
35 compact form, in quantity not exceeding 160 acres for each member of each of said tribes thus to be settled; the boundaries of each of said districts to be distinctly marked, and the land conveyed in fee simple to each of said tribes, to be held in common or by their members in severalty, as the United States may decide.

Said lands thus disposed of, to be paid for to the Cherokee Nation at such price as may be agreed on between the said parties in interest, subject to the approval of the President; and if they should not agree, then the price to be fixed by the President.

The Cherokee Nation to retain the right of possession of, and jurisdiction over, all of said county west of 96° of longitude, until thus sold and occupied, after which, their jurisdiction and right of possession to terminate forever as to each of said districts thus sold and occupied.

ARTICLE 17. The Cherokee Nation hereby cedes in trust to the
36 United States, the tract of land in the State of Kansas which was sold to the Cherokees by the United States, under the provisions of the 2d article of the treaty of 1835, and also that strip of the land ceded to the nation by the 4th article of said treaty, which is included in the State of Kansas; and the Cherokees consent that said lands may be included in the limits and jurisdiction of the said State.

The lands herein ceded shall be surveyed as the public lands of the United States are surveyed, under the direction of the Commissioner of the General Land Office, and shall be appraised by two disinterested persons, one to be designated by the Cherokee national council, and one by the Secretary of the Interior; and in case of disagreement, by a third person, to be mutually selected by the aforesaid appraisers. The appraisement to be not less than an average of one dollar and a quarter per acre, exclusive of improvements.

And the Secretary of the Interior shall, from time to time, as such surveys and appraisements are approved by him, after due ad-
37 vertisement for sealed bids, sell such lands to the highest bidders for cash, in parcels not exceeding one hundred and sixty acres, and at not less than the appraised value: *Provided*, That whenever there are improvements of the value of $50 made on the lands, not being mineral, and owned and personally occupied by any person for agricultural purposes at the date of the signing hereof, such person so owning and in person residing on such improvements, shall, after due proof made under such regulations as the Secretary of the Interior may prescribe, be entitled to buy at the appraised value, the smallest quantity of land in legal subdivisions, which will include his improvements, not exceeding, in the aggregate, one hundred and sixty acres, the expenses of survey and appraisement to be paid by the Secretary out of the proceeds of sale of said land: *Provided*, That nothing in this article shall prevent the Secretary of the Interior from selling the whole of said neutral lands in a body to any responsible party for cash, for a sum not less than eight hundred thousand dollars.

38 ARTICLE 18. That any lands owned by the Cherokees, in the

State of Arkansas, and in States east of the Mississippi, may be sold by the Cherokee Nation in such manner as their national council may prescribe, all such sales being first approved by the Secretary of the Interior.

ARTICLE 19. All Cherokees being heads of families, residing at the date of the ratification of this treaty on any of the lands herein ceded or authorized to be sold, and desiring to remove to the reserved country, shall be paid by the purchasers of said lands the value of such improvements, to be ascertained and appraised by the commissioners who appraise the lands, subject to the approval of the Secretary of the Interior; and if he shall elect to remain on the land now occupied by him, shall be entitled to receive a patent from the United States, in fee-simple, for 320 acres of land, to include his improvements, and thereupon he and his family shall cease to be members of the nation.

39 ARTICLE 20. Whenever the Cherokee national council shall request it, the Secretary of the Interior shall cause the country reserved for the Cherokees to be surveyed and allotted among them at the expense of the United States.

ARTICLE 21. It being difficult to learn the precise boundary line between the Cherokee country and the States of Arkansas, Missouri, and Kansas, it is agreed that the United States shall, at its own expense, cause the same to be run as far west as the Arkansas, and marked by permanent and conspicuous monuments, by two commissioners, one of whom shall be designated by the Cherokee national council.

ARTICLE 22. The Cherokee national council, or any duly-appointed delegation thereof, shall have the privilege to appoint an agent to examine the accounts of the nation with the Government of the United States at such time as they may see proper, and to continue or discharge such agent, and to appoint another, as may be thought best by

40 such council or delegation; and such agent shall have free access to all accounts and books in the Executive Departments, relating to the business of said Cherokee Nation, and an opportunity to examine the same in the presence of the officer having such books and papers in charge.

ARTICLE 23. All funds now due the nation, or that may hereafter accrue from the sale of their lands by the United States, as hereinbefore provided for, shall be invested in United States registered stocks at their current value, and the interest on all said funds shall be paid semi-annually on the order of the Cherokee Nation, and shall be applied to the following purposes, to wit: Thirty-five per cent. shall be applied for the support of the common schools of the nation and educational purposes; fifteen per cent. for the orphan fund; fifty per cent. for general purposes, including reasonable salaries of district officers; and the Secretary of the Interior, with the approval of the President of the United States, may

41 pay out of the funds due the nation, on the order of the national council or a delegation duly authorized by it, such amount as he may deem necessary to meet outstanding obligations of the Cherokee Nation, caused by the suspension of the payment of their annuities, not to exceed the sum of one hundred and fifty thousand dollars.

ARTICLE 24. As a slight testimony for the useful and arduous services of the Rev. Evan Jones, for forty years a missionary in the Cherokee Nation, now a cripple, old and poor, it is agreed that the sum of three thousand dollars be paid to him, under the direction of the Secretary of the Interior, out of any Cherokee funds in or to come into his hands, not otherwise appropriated.

ARTICLE 25. A large number of the Cherokees who served in the Army

of the United States having died, leaving no heirs entitled to receive bounties and arrears of pay on account of such service, it is agreed
42 that all bounties and arrears for service in the regiments of Indian United States Volunteers which shall remain unclaimed, by any person legally entitled to receive the same, for two years from the ratification of this treaty, shall be paid as the national council may direct, to be applied to the foundation and support of an asylum for the education of orphan children, which asylum shall be under the control of the national council, or of such benevolent society as said council may designate, subject to the approval of the Secretary of the Interior.

ARTICLE 26. The United States guarantee to the people of the Cherokee Nation the quiet and peaceable possession of their country, and protection against domestic feuds and insurrections, and against hostilities of other tribes. They shall also be protected against inter[r]uptions or intrusions from all unauthorized citizens of the United States, who may attempt to settle on their lands or reside in their Territory. In case of hostilities among the Indian tribes the United States agree
43 that the party or parties commencing the same shall, so far as practicable, make reparation for the damages done.

ARTICLE 27. The United States shall have the right to establish one or more military posts or stations in the Cherokee Nation, as may be deemed necessary for the proper protection of the citizens of the United States lawfully residing therein, and the Cherokees and other citizens of the Indian country. But no sutler or other person connected therewith, either in or out of the military organization, shall be permitted to introduce any spirit[u]ous, vinous, or malt liquors into the Cherokee Nation, except the medical department proper, and by them only for strictly medical purposes, and all persons not in the military service of the United States, not citizens of the Cherokee Nation, are to be prohibited from coming into the Cherokee Nation or remaining in the same, except as herein otherwise provided; and it is the duty of the United States Indian agent for the Cherokees to have such persons, not
44 lawfully residing or sojourning therein, removed from the nation, as they now are, or hereafter may be, required by the Indian intercourse laws of the United States.

ARTICLE 28. The United States hereby agree to pay for provisions and clothing furnished the Army under Appotholehala in the winter of 1861 and 1862, not to exceed the sum of ten thousand dollars, the accounts to be ascertained and settled by the Secretary of the Interior.

ARTICLE 29. The sum of ten thousand [dollars,] or so much thereof as may be necessary to pay the expenses of the delegates and representatives of the Cherokees invited by the Government to visit Washington for the purposes of making this treaty, shall be paid by the United States on the ratification of this treaty.

ARTICLE 30. The United States agree to pay to the proper claimants all losses of property by missionaries or missionary societies, resulting
45 from their being ordered or driven from the country by United States agents, and from their property being taken and occupied or destroyed by *by* United States troops, not exceeding in the aggregate twenty thousand dollars, to be ascertained by the Secretary of the Interior.

ARTICLE 31. All provisions of treaties heretofore ratified and in force, and not inconsistent with the provisions of this treaty, are hereby reaffirmed and declared to be in full force; and nothing herein shall be construed as an acknowledgment by the United States, or as a relinquish-

ment by the Cherokee Nation, of any claims or demands under the guarantees of former treaties, except as herein expressly provided.

In testimony whereof the said commissioners on the part of the United States, and the said delegation on the part of the Cherokee Nation, have hereunto set their hands and seals, at the city of Washington, this *ninth* [nineteenth] day of July, A. D. one thousand eight hundred and sixty-six.

46

D. N. COOLEY,
Com'r Ind. Affairs.
ELIJAH SELLS,
Sup't Ind. Aff's.
SMITH CHRISTIE,
WHITE CATCHER,
JAMES McDANIEL,
S. H. BENGE,
DAN'L H. ROSS,
J. B. JONES,
Delegates of the Cherokee Nation appointed by Resolution of the National Council.

In presence of—
W. H. WATSON.
J. W. WRIGHT.

Signatures witnessed by the following-named persons, the following interlineations being made before signing: On page 1st the word "the" interlined; on page 11 the word "the" struck out, and to said page 11 a sheet attached requiring publication of laws; and on page 34th the word "ceded" struck out and the words "neutral lands" inserted, page 47½ added, relating to expenses of treaty.

47

THOMAS EWING, J'r.
W'M A. PHILLIPS.
J. W. WRIGHT.

And whereas the said treaty having been submitted to the Senate of the United States for its constitutional action thereon, the Senate did, on the twenty-seventh day of July, one thousand eight hundred and sixty-six, advise and consent to the ratification of the same, with amendments, by a resolution in the words and figures following, to wit:

IN EXECUTIVE SESSION,
SENATE OF THE UNITED STATES,
July 27, 1866.

Resolved, (*two-thirds of the Senators present concurring,*) That the Senate advise and consent to the ratification of the articles of agreement and convention, made at the city of Washington, on the nineteenth day of July, in the year of our Lord one thousand eight hundred and sixty-six, between the United States and the Cherokee Nation of Indians with the following

48 *Amendments:*

1st. Insert at the end of article two the following:

But the Cherokee Nation stipulate and agree to deliver up to the United States, or their duly-authorized agent, any or all public property, particularly ordnance, ordnance stores, arms of all kinds, and quartermaster's stores, in their possession or control, which belonged to the

United States or the so-called Confederate States, without any reservation.

2nd. Strike out the last proviso in article 17, and insert in lieu thereof the following:

Provided, That nothing in this article shall prevent the Secretary of the Interior from selling the whole of said lands not occupied by actual settlers at the date of the ratification of this treaty, not exceeding 160 acres to each person entitled to pre-emption under the pre-emption laws of the United States, in a body, to any responsible party for cash, for a sum not less than one dollar per acre.

3d. Insert at the end of article 29 the following:

49 And the Secretary of the Interior shall also be authorized to pay the reasonable costs and expenses of the delegates of the Southern Cherokees. The money to be paid under this article shall be paid out of the proceeds of the sales of the national lands in Kansas.

Attest:

J. W. FORNEY, *Secretary.*

And whereas the foregoing amendments having been duly explained and interpreted to the aforenamed delegates of the Cherokee Nation, they did, on the thirty-first day of July, one thousand eight hundred and sixty-six, give, on behalf of said nation, their free and voluntary assent to said amendments, in the words and figures following, to wit:

Whereas the Senate of the United States did, on the 27th day of July, 1866, advise and consent to the ratification of the articles of agreement and convention, made at the city of Washington, on the nineteenth day of July, in the year of our Lord one thousand
50 eight hundred and sixty-six, between the United States and the Cherokee Nation of Indians, with the following amendments, to wit:

1st. Insert at the end of article 2 the following:

But the Cherokee Nation stipulate and agree to deliver up to the United States, or their duly authorized agent, any or all public property, particularly ordnance, ordnance stores, arms of all kinds, and quartermaster's stores, in their possession or control, which belong to the United States, or the so-called Confederate States, without any reservation.

2nd. Strike out the last proviso in article 17, and insert in lieu thereof the following:

Provided, That nothing in this article shall prevent the Secretary of the Interior from selling the whole of said lands not occupied by actual settlers, at the date of the ratification of this treaty, not exceeding 160 acres to each person entitled to pre-emption under the pre-emption laws of the United States, in a body, to any responsible
51 party for cash, for a sum not less than one dollar per acre.

3d. Insert at the end of article 29 the following:

And the Secretary of the Interior shall also be authorized to pay the reasonable costs and expenses of the delegates of the Southern Cherokees. The moneys to be paid under this article shall be paid out of the proceeds of the sales of the national lands in Kansas:

Now, therefore, we, the delegates on the part of the said Cherokee Nation, do hereby assent and agree to the said amendments above written, the same having been explained to us, and being fully understood by us.

Witness our hands and seals this 31st day of July, A. D. 1866, at Washington, D. C.

SMITH CHRISTIE. [SEAL.]
WHITE CATCHER. [SEAL.]
JAMES McDANIEL. [SEAL.]
S. H. BENGE. [SEAL.]
DAN'L H. ROSS. [SEAL.]
J. B. JONES. [SEAL.]

In presence of—

52 D. N. COOLEY,
Com'r Ind. Affairs.
J. HARLAN,
U. S. Ind. Agent.
CHARLES E. MIX.
J. W. WRIGHT.
W. R. IRWIN.

Now, therefore, be it known that I, Andrew Johnson, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in its resolutions of the twenty-seventh of July, one thousand eight hundred and sixty-six, accept, ratify, and confirm the said treaty, with the amendments, as aforesaid.

In testimony whereof I have signed my name hereto, and have caused the seal of the United States to be affixed.

[SEAL.] Done at the city of Washington, this eleventh day of August, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States of America the ninety-first.

ANDREW JOHNSON.

By the President:

HENRY STANBERRY,
Acting Secretary of State.

53 (Endorsed:) No. 384. Peter J. Holden vs. James F. Foy. Exhibit "A." Treaty 1866. Filed May 26, 1871. A. S. Thomas, clerk.

54 EXHIBIT "B."

Supplemental article to the treaty of July 19, 1866, between the United States of America and the Cherokee Nation of Indians. Concluded April 27, 1868; ratification advised June 6, 1868; proclaimed June 10, 1868.

55 Andrew Johnson, President of the United States of America, to all and singular to whom these presents shall come, greeting:

Whereas to a treaty concluded at the city of Washington, in the District of Columbia, on the nineteenth day of July, in the year of our Lord one thousand eight hundred and sixty-six, between the United States of America and the Cherokee Nation of Indians, through their respective representatives, a supplemental article was made and concluded, at the city of Washington, in the District of Columbia, on the twenty-seventh day of April, in the year of our Lord one thousand eight hundred and sixty-eight, by and between Nathaniel G. Taylor, commissioner on the part of the United States, and Lewis Downing, H. D. Reese, Samuel Smith, W'm P. Adair, J. P. Davis, Elias C. Boudinot,

J. A. Scales, and Arch. Scraper, delegates of the said Cherokee Nation of Indians, on the part of said Indians, and duly authorized thereto by them, which supplemental article of treaty is in the words and figures following, to wit:

56 Supplemental article to a treaty concluded at Washington City, July 19th, A. D. 1866; ratified, with amendments, July 27th, A. D. 1866; amendments accepted July 31st, A. D. 1866, and the whole proclaimed August 11th, A. D. 1866, between the United States of America and the Cherokee Nation of Indians.

Whereas, under the provisions of the 17th article of a treaty and amendments thereto made between the United States and the Cherokee Nation of Indians, and proclaimed August 11th, A. D. 1866, a contract was made and entered into by James Harlan, Secretary of the Interior, on behalf of the United States, of the one part, and by the American Emigrant Company, a corporation chartered and existing under the laws of the State of Connecticut, of the other part, dated August 30th, A. D. 1866, for the sale of the so-called "Cherokee neutral lands," in the State of Kansas, containing eight hundred thousand acres, more or less, with the limitations and restrictions set forth in the said 17th article of said treaty, as amended, on the terms and conditions therein mentioned, which contract is now on file in the Department of the Interior;

57 And whereas Orville H. Browning, Secretary of the Interior, regarding said sale as illegal, and not in conformity with said treaty and amendments thereto, did, on the ninth day of October, A. D. 1867, for and in behalf of the United States, enter into a contract with James F. Joy, of the city of Detroit, Michigan, for the sale of the aforesaid lands, on the terms and conditions in said contract set forth, and which is on file in the Department of the Interior;

And whereas, for the purpose of enabling the Secretary of the Interior, as trustee for the Cherokee Nation of Indians to collect the proceeds of sales of said lands, and invest the same for the benefit of said Indians, and for the purpose of preventing litigation, and of harmonizing the conflicting interests of the said American Emigrant Company and of the said James F. Joy, it is the desire of all the parties in interest that the said American Emigrant Company shall assign their said contract, and all their right, title, claim, and interest in and to the said "Cherokee neutral lands" to the said James F. Joy, and

58 that the said Joy shall assume and conform to all the obligations of said company, under their said contract, as hereinafter modified:

It is therefore agreed, by and between Nathaniel G. Taylor, commissioner on the part of the United States of America, and Lewis Downing, H. D. Reese, W'm P. Adair, Elias C. Boudinot, J. A. Scales, Archie Scraper, J. Porum Davis, and Samuel Smith, commissioners on the part of the Cherokee Nation of Indians, that an assignment of the contract made and entered into on the 30th day of August, A. D. 1866, by and between James Harlan, Secretary of the Interior, for and in behalf of the United States of America, of the one part, and the American Emigrant Company, a corporation chartered and existing under the laws of the State of Connecticut, of the other part, and now on file in the Department of the Interior, to James F. Joy, of the city of Detroit, Michigan, shall be made, and that said contract as hereinafter modified, be and the same is hereby, with the consent of all parties, reaffirmed and declared valid; and that the contract entered into by and be-

59 tween Orville H. Browning, for and in behalf of the United States of the one part, and James F. Joy, of the city of Detroit, Michigan, of the other part, on the 9th day of October, A. D. 1867, and now on file in the Department of the Interior, shall be relinquished and cancelled by the said James F. Joy, or his duly authorized agent or attorney, and the said first contract as hereinafter modified, and the assignment of the first contract, and the relinquishment of the second contract, are hereby ratified and confirmed, whenever said assignment of the first contract and the relinquishment of the second shall be entered of record in the Department of the Interior, and when the said James F. Joy shall have accepted said assignment, and shall have entered into a contract with the Secretary of the Interior to assume and perform all obligations of the said American Emigrant Company under said first-named contract, as hereinafter modified.

The modifications hereinbefore mentioned of said contract, are hereby declared to be—

60 1. That within ten days from the ratification of this supplemental article, the sum of seventy-five thousand dollars shall be paid to the Secretary of the Interior, as trustee for the Cherokee Nation of Indians.

2. That the other deferred payments specified in said contract, shall be paid when they respectively fall due, with interest only from the date of the ratification hereof.

It is further agreed and distinctly understood that, under the conveyance of the "Cherokee neutral lands" to the said American Emigrant Company "with all beneficial interests therein," as set forth in said contract, the said company and their assignees shall take only the residue of said lands, after securing to "actual settlers" the lands to which they are entitled under the provisions of the 17th article and amendments thereto of the said Cherokee treaty of Aug. 11th 1866, and that the proceeds of the sales of said lands so occupied at the date of said treaty by "actual settlers" shall enure to the sole benefit of, and be retained by, the Secretary of the Interior, as trustee for the said Cherokee Nation of Indians.

61 In testimony whereof the said commissioners on the part of the United States, and on the part of the Cherokee Nation of Indians, have hereunto set their hands and seals at the city of Washington, this 27th day of April, A. D. 1868.

N. G. TAYLOR,
Commissioner in behalf of the United States.

Delegates of the Cherokee Nation,
LEWIS DOWNING,
Chief of Cherokees.
H. D. REESE,
Ch'm'n of Delegation.
SAMUEL SMITH,
W'M P. ADAIR,
J. P. DAVIS,
ELIAS C. BOUDINOT,
J. A. SCALES,
ARCH. SCRAPER,
Cherokee Delegates.

In presence of—
H. M. WATTERSON.
CHARLES E. MIX.

And whereas the said supplemental article of treaty having been submitted to the Senate of the United States for its constitutional
62 action thereon, the Senate did, on the sixth day of June, one thousand eight hundred and sixty-eight, advise and consent to the ratification of the same by a resolution in the words and figures following, to wit:

IN EXECUTIVE SESSION,
SENATE OF THE UNITED STATES,
June 6, 1868.

Resolved, (two-thirds of the Senators present concurring,) That the Senate advise and consent to the ratification of the supplemental article, (concluded April 27, 1868,) to a treaty between the United States and the Cherokee Nation of Indians, concluded at Washington City, July 19, 1866; ratified, with amendments, July 27, 1866; amendments accepted July 31, 1866; and the whole proclaimed August 11, 1866.

Attest: GEO. C. GORHAM.
Secretary.

Now, therefore, be it known that I, Andrew Johnson, President of the United States of America, do, in pursuance of the advice and con-
63 sent of the Senate, as expressed in its resolution of the sixth of June, one thousand eight hundred and sixty-eight, accept, ratify, and confirm the said supplemental article of treaty aforesaid.

[SEAL.] In testimony whereof, I have hereto signed my name, and caused the seal of the United States to be affixed. Done at the city of Washington, this tenth day of June, in the year of our Lord, one thousand eight hundred and sixty-eight, and the independence of the United States of America, the ninety-second.

ANDREW JOHNSON.

By the President:

WILLIAM H. SEWARD,
Secretary of State.

(Endorsed:) No. 384. Peter F. Holden vs. James F. Joy. Exhibit "B." Supplemental article, 1868. Filed May 26, 1871. A. S. Thomas, clerk.

64 EXHIBIT "C."

This agreement, made this 30th day of August, A. D. 1866, by and between James Harlan, Secretary of the Interior, on behalf of the United States, of the one part, and The American Emigrant Company, a corporation chartered and existing under the laws of the State of Connecticut, of the other part, witnesseth:

That the said Harlan agrees to sell, and hereby doth sell, to the said company, all that tract of land known as the "Cherokee neutral land," in the State of Kansas, containing (800,000) eight hundred thousand acres, more or less, with the limitations and restrictions set forth in the seventeenth article of a treaty between the United States and said Cherokee Indians, ratified on the 11th day of August, A. D. 1866, as amended by the United States Senate, with all the beneficial interest therein, at the rate of one dollar per acre, in lawful money of the United States, to be paid to the Secretary of the Interior, in trust, for said Indians, as hereinafter set forth, viz: Twenty-five thousand dollars on the

execution hereof, twenty-five thousand dollars on the approval of
65 the surveys of said lands by the Commissioner of the General Land Office, and twenty-five thousand dollars on the 30th day of August, 1867; seventy-five thousand dollars on the 30th day of August, 1868; seventy-five thousand dollars on the 30th day of August, 1869; seventy-five thousand dollars on the 30th day of August, A. D. 1870, and one hundred thousand dollars per annum thence afterward until the whole shall be paid, each of said several sums to draw interest at the rate of five per cent. per annum from the date of the approval of the surveys aforesaid.

The said American Emigrant Company agree to pay the said several sums of money, with interest thereon as aforesaid, to the said Secretary in Washington, in lawful money of the United States, as the same shall become due; the said interest on each and all deferred payments to be paid annually on the first day of July. The United States agree to cause said lands to be surveyed as public lands are usually surveyed, in one year from the date hereof, and on the payment of fifty thousand
66 dollars, to set apart for said company a quantity of said lands, in one body, in as compact form as practicable, extending directly across said tract of land, from east to west, and containing a number of acres equal to the number of dollars then paid, and from time to time to convey the same, by patent, to said company or its assigns, whenever afterward requested so to do, in such quantities, by legal subdivisions, as said company shall indicate; and on the payment of each additional installment, with interest as herein stipulated, to set apart for said company an additional tract of land, in compact form, where said company may request, but extending directly across the said neutral lands from east to west, containing a number of acres equal to the number of dollars of principal thus paid, and to convey the same to said company or its assigns, as hereinbefore described; and so on, from time to time, until the whole shall be paid, and no conveyance of any part of said lands shall be made until the same shall be paid for as provided in this agreement, but said company may make payments at earlier
67 periods than those indicated, or pay the whole, principal and interest, and receive titles of tracts of land accordingly, if they shall so elect.

In witness whereof said Harlan has hereto affixed his name and the seal of the Department of the Interior of the United States; and the said Emigrant Company has also, by Franklin Chamberlain, a director of said company, thereto lawfully authorized by vote of said company, (copy whereof is hereto annexed) and affixed the name and seal of said company, the day and year first above written.

JAMES HARLAN,
Secretary of the Interior.

[SEAL.] AMERICAN EMIGRANT COMPANY,
By F. CHAMBERLIN,
Director and Attorney-in-fact.

Executed in presence of—
W. PENN CLARKE.

HARTFORD, CONNECTICUT, *June* 6, *A. D.* 1868.

For value received, the American Emigrant Company, a cor-
68 poration chartered and existing under the laws of the State of Connecticut, do hereby assign and transfer unto James F. Joy, of the city of Detroit, Michigan, all the right, title, claim, or interests which the said American Emigrant Company has in or to a certain con-

tract made and entered into on the 30th day of August, eighteen hundred and sixty-six, with James Harlan, Secretary of the Interior, on behalf of the United States, for the sale of the Cherokee neutral lands, and do transfer to said James F. Joy the credit and benefit of the twenty-five thousand dollars which was paid to the Secretary of the Interior, in

Witness:
J. B. GRINNEL.

[U. S. rev. five-cent stamp.]

69 *Resolve incorporating the American Emigrant Company.—(General Assembly, May session, A. D. 1863.)*

Resolved by this assembly:

SECTION 1. That Andrew G. Hammond, Francis Gillette, John Hooker, Franklin Chamberlin, and Henry K. W. Welch, all of the city of Hartford, in this State, Samuel P. Lyman, of the city and State of New York, and Ferdinand C. D. McKay, James C. Savery, and Tallmadge E. Brown, all of the city of Des Moines, in the State of Iowa, and their successors and assigns be, and they are hereby, made a corporation under the name of the American Emigrant Company, for the purpose of procuring and assisting emigrants from foreign countries to settle in the United States, and especially in the Western States and Territories of the same, with power to purchase lands and dispose of the same for actual settlement, where there is nothing in the laws of the States or Territories where such lands shall be situated that shall forbid such purchase and holding, or where license shall be obtained from any
70 such States or Territories, authorizing such purchase and holding; and with all the usual corporate powers necessary and proper to carry out the objects of the corporation.

SEC. 2. The capital stock of said company shall not exceed one million of dollars, and shall amount to one hundred and eighty thousand dollars before said company shall commence operations. The capital shall be divided into shares of one hundred dollars each, which shall be transferable in writing in such mode as the by-laws of the company shall prescribe.

SEC. 3. The company shall have power to enact by-laws not inconsistent with the provisions of this charter, nor with the laws of this State or the United States prescribing the mode of electing its officers and their duties; the number of directors; the time and place of the annual meetings; the manner of calling special meetings; the mode of transferring the stock of the company; and, generally, with regard to the manner of conducting the business of the company.

71 SEC. 4. The officers of the company shall consist of a president, vice-president, treasurer, and secretary, and a board of directors, who shall have the usual powers of such officers.

SEC. 5. At all meetings of the company the stockholders shall vote by shares, and any stockholder not present may vote upon his stock by proxy; the authority in such case to be given in such manner as shall be prescribed by the by-laws.

SEC. 6. The first meeting of the company shall be holden at the Exchange Bank, in the city of Hartford, on the first Monday in July, 1863,

at 2 o'clock in the afternoon; at which meeting the officers of the company shall be elected, who shall hold office until the next annual meeting.

SEC. 7. The directors of the company shall, within four months after the first day of January in each year, lodge in the office of the secretary of this State a certificate, signed and sworn to by the secretary of the company, or by two of the directors, stating, so nearly as can be ascertained, the amount and general character of the assets of the com-
72 pany and the amount of its liabilities; and in case such certificate shall not be so made and lodged, the directors of the company for the time being shall be personally liable for all debts of the company contracted during the time of such neglect.

SEC. 8. This act shall take effect from its passage, and may be altered, amended, or repealed at the pleasure of the general assembly.

Resolution amending the charter of The American Emigrant Company.—(General assembly, May session, A. D. 1865.)

Resolved by this general assembly:

SECTION 1. That the American Emigrant Company, incorporated by resolution of the general assembly at its session in May, A. D. 1863, shall have power, in addition to the powers conferred by the original charter, to make contracts for the chartering of steamships and other vessels for the transportation of emigrants; to purchase, own, and run such vessels for such purpose; to deal in passenger tickets for the foreign and inland transportation of emigrants by land and water.

(Endorsed:) No. 384. Peter F. Holden vs. James F. Joy. Exhibit "C." Contract between the Sec't'y Interior and The American Emigrant Co. Filed May 26, 1871. A. S. Thomas, clerk.

73

74 EXHIBIT "D."

Whereas, on the 30th day of August, A. D. 1866, an agreement was made between James Harlan, then Secretary of the Interior, on behalf of the United States, of the one part, and The American Emigrant Company, on the other part, wherein the said Harlan agreed to sell, and thereby did sell, to the said company, all that tract of land known as the "Cherokee neutral lands" in the State of Kansas, containing 800,000 (eight hundred thousand) acres, more or less, with the limitations and restrictions set forth in the seventeenth article of a treaty between the United States and the Cherokee Indians, ratified on the eleventh day of August, A. D. 1866, as amended by the United States Senate, with all beneficial interest therein, at the rate of one dollar per acre, in lawful money of the United States, to be paid to the Secretary of the Interior, in trust for said Indians, as thereinafter set forth, viz: Twenty-five thousand dollars on the execution of said contract; twenty-five thousand dollars on the approval of the survey of said lands by the Commis-
75 sioner of the General Land Office; and twenty-five thousand dollars on the 30th day of August, 1867; seventy-five thousand dollars on the 30th day of August, 1868; seventy-five thousand dollars on the 30th day of August, 1869; and seventy-five thousand dollars on the 30th day of August, 1870; and one hundred thousand dollars per

annum thereafter until the whole should be paid; each of said several sums to draw interest at the rate of five per cent. per annum from the date of the approval of the survey as aforesaid. And the said American Emigrant Company agreed thereby to pay the said several sums of money, and the interest thereon as aforesaid, to the Secretary in Washington, as the same should become due, and the said interest on each and all the deferred payments to be paid annually on the first day of July, the United States agreeing also thereby to cause said lands to be surveyed, as public lands are usually surveyed, in one year from the date of said agreement; and, on the payment of fifty thousand dollars, to set apart for said company a quantity of said lands in one body, in as compact a form as practicable, extending directly across the said
76 land from east to west, and containing a number of acres equal to the number of dollars thus paid, and from time to time to convey the same by patent to said company or its assigns whenever afterwards requested so to do, in such quantities, and by legal subdivisions, as the said company shall indicate; and on the payment of each additional installment, with interest, as thereon stipulated, to set apart for said company an additional tract of land, in compact form, when the said company request, but extending directly across the neutral lands from east to west, containing a number of acres equal to the number of dollars of principal thus paid, and to convey the same to the said company or its assigns, as thereinbefore described; and so on from time to time until the whole shall be paid; and no conveyance of any part of said lands to be made until the same should have been paid for, as provided in the said contract, though it was also provided thereby that the said company might make payments at an earlier period than those indicated, or pay the whole, principal and interest, and receive titles and tracts of land accordingly, if it should so elect, as by said con-
77 tract on file in the Department of the Secretary of the Interior will more fully appear.

And whereas, afterwards the said contract was declared invalid, as not being in accordance with the terms of treaty, and subsequently, and on the 9th day of October, A. D. 1867, an agreement was made between Orville H. Browning, Secretary of the Interior, acting for and on behalf of the United States, and James F. Joy, whereby the said Secretary, agreed to sell and did thereby sell to the said Joy, all of the said tract of land, for the price of one dollar an acre cash, except such parcels thereof as were embraced in the tenor and effect of the two provisos to the seventeenth section of said treaty, above alluded to, and whereas difficulties arose by reason of conflicting claims likely to result in delay, and whereas for the purpose of obviating the same a supplemental article to said treaty, was made and entered into between the United States, by N. G. Taylor, commissioner, and the Cherokee Nation of Indians, dated at Washington, the 27th day of April, 1868, and duly ratified by the Senate of the United States, on Saturday the 6th
78 day of June, 1868, by which it was provided that an assignment might or should be made by the said American Emigrant Company of its said contract, made with James Harlan, Secretary above described to the said James F. Joy, and that said contract as modified by the terms of said supplemental article, should, with the assent of all parties, be re-affirmed and declared valid, and that the said contract between the said O. H. Browning and the said James F. Joy, should be relinquished and cancelled by the said Joy, and that the said assignment of the said first contract, and the relinquishment of the second

should be, and were thereby, ratified and confirmed, wherever such assignment and relinquishment should be entered of record in the Department of the Interior, and when the said Joy should have accepted said assignment, and should have entered into a contract with the Secretary of the Interior to assume and perform all the obligations of the said American Emigrant Company under the said first named contract, as modified by said supplemental article, which said modifications of said contract were as follows, viz:

79 First. That within ten days from the ratification of the said supplemental article, the sum of seventy-five thousand dollars should be paid to the Secretary of the Interior, as trustee for the Cherokee Nation of Indians.

Second. That the other deferred payments specified in said contract, should be paid when they respectively fall due, with interest only from the date of the ratification thereof, and it was further provided that, under the conveyance of the Cherokee neutral lands to the American Emigrant Company, with all beneficial interest therein, as set forth in said contract, the said company and its assigns, should take only the residue of said lands after securing to actual settlers the lands to which they were entitled, under the provisions of the seventeenth article and the amendments thereto of the said Cherokee treaty, of August 11th, 1866, and that the proceeds of the sales of said lands so occupied at the date of the said treaty, by actual settlers, should enure to the sole benefit of, and be retained by the Secretary of the Interior as trustee for, the Cherokee Nation of Indians.

80 Now, therefore, this agreement between Orville H. Browning, Secretary of the Interior, for and on behalf of the United States, and James F. Joy, for the purpose of carrying into effect the terms of said treaty, the assignment of the American Emigrant Company to James F. Joy, and the relinquishment by said Joy of his said contract with said Browning having been duly made and entered of record, as required by said supplemental article, witnesseth: That the said James F. Joy agrees that he will pay or cause to be paid within ten days from the date of the ratification of said supplemental article, the sum of seventy-five thousand dollars to the Secretary of the Interior, as trustee for the Cherokee Nation of Indians; also that he will pay or cause to be paid to the said Secretary, for like purpose, all the other deferred payments, at the time and in the manner specified in the said contract between the said James Harlan and the said American Emigrant Company, as they shall respectively fall due, with interest as therein agreed, to commence however, only from the date of the ratification of said supplemental article, viz: June 6th, 1868.

81 And the said Joy further agrees that he will and hereby does accept said assignment, and will assume and does hereby assume and will perform all the duties and obligations of the said American Emigrant Company, under the said first above-mentioned contract, as modified by said supplemental article.

And the said O. H. Browning, Secretary as aforesaid, agrees that the United States shall and will do and perform all the duties and obligations resting upon them to do and perform, according to the terms of the agreement in the said contract contained, and will carry out and execute all its provisions and stipulations, and cause patents of said lands to be executed and delivered to the said James F. Joy, or his assigns, in accordance with the terms and provisions thereof, except so far as the same have been modified by the stipulations of said supplemental article.

In witness whereof the said parties have hereto set their signatures this the eighth day of June, A. D. 1868, at Washington.

82 (Signed) O. H. BROWNING,
Secretary of the Interior.

(Signed) JAMES F. JOY. [SEAL.]

The assignment and relinquishment within mentioned are recorded in trust funds record "B," page 243.

Memorandum.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., June 8, 1868.

It being uncertain how much of the (800,000) acres will be taken by actual settlers under the terms of the treaty, and supplemental article, ratified June 6th, instant, it is understood as soon as the number of acres so taken shall be ascertained, it shall be stated and put upon the back of this contract, as well as certified to Mr. Joy, that the amount he has to pay for and the amount of his annual interest may be fixed and settled, to avoid questions on the subject.

(Signed) O. H. BROWNING,
Secretary of the Interior.

83 DEPARTMENT OF THE INTERIOR.

I, Columbus Delano, Secretary of the Interior, do hereby certify that the foregoing is a full, true, & complete copy of a contract entered into on the 8th day of June, 1868, between Orville H. Browning, Secretary of the Interior, by and on behalf of the United States, of the one part, and James F. Joy, of the other part, and also of the endorsements made upon said contract.

In witness whereof I have hereunto set my hand, and caused the seal of said Department to be affixed, on this 14th day of November, A. D. 1870.

[SEAL.] C. DELANO.

(Endorsed:) No. 384. Peter F. Holden vs. James F. Joy. Exhibit "D." Contract between James F. Joy & the Sec'ty of the Interior. Filed May 26, 1871. A. S. Thomas, clerk.

84 EXHIBIT "E."

To all to whom these presents shall come, greeting:

Whereas by certain treaties made by the United States of America with the Cherokee Nation of Indians, of the 6th of May, one thousand eight hundred and twenty-eight; the 14th of February, one thousand eight hundred and thirty-three; and the 29th of December, one thousand eight hundred and thirty-five; it was stipulated and agreed, on the part of the United States, that, in consideration of the promises mentioneed in the said treaties respectively, the United States should guarantee, secure, and convey by patent to the said Cherokee Nation certain tracts of land, the description of which tracts, and the terms and conditions on which they were to be conveyed *and* set forth in the second and third articles of the treaty of the 29th of December, one thousand eight hundred and thirty-five, in the words following, that is to say:

"ARTICLE 2. Whereas by the treaty of May 6, one thousand eight

hundred and twenty-eight, and the supplementary treaty thereto of February 14, one thousand eight hundred and thirty-three, with
85 the Cherokees west of the Mississippi, the United States guaranteed and secured, to be conveyed by patent to the Cherokee Nation of Indians, the following tract of country: Beginning at a point on the old western territorial line of Arkansas Territory, being twenty-five miles north from the point where the territorial line crosses the Arkansas River; thence running from said north point south, on the said territorial line, where the said territorial line crosses Verdigris River; thence down said Verdigris River to the Arkansas; thence down said Arkansas to a point where a stone is placed, opposite the east or lower banks of Grand River, at its junction with the Arkansas; thence running south forty-four degrees west, one mile; thence in a straight line to a point four miles northerly from the mouth of the north fork of the Canadian; thence along the said four-mile line, to the Canadian; thence down the Canadian to the Arkansas; thence down the Arkansas to a point on the Arkansas, where the eastern Choctaw boundary
86 strikes said river, and running thence with western line of Arkansas Territory, as now defined, to the southwest corner of Missouri; thence along the western Missouri line to the land assigned the Senecas; thence on the south line of the Senecas to the Grand River; thence up said Grand River as far as the south line of the Osage reservation extended, if necessary; thence up and between said south Osage line, extended west if necessary, and a line drawn due west from the point of beginning to a certain distance west, at which a line running north and south from said Osage line to said due west line, will make seven millions of acres within the whole described boundaries.

"In addition to the seven millions of acres of land thus provided for and bounded, the United States further guarantee to the Cherokee Nation a perpetual outlet west, and a free and unmolested use of all the country west of the western boundary of said seven millions of acres, as far west as the sovereignty of the United States, and their right of soil extend: *Provided, however*, That if the saline or salt plain
87 on the western prairie shall fall within said limits prescribed for said outlet, the right is reserved to the United States to permit other tribes of red men to get salt on said plain in common with the Cherokees; and letters-patent shall be issued by the United States as soon as practicable for the land hereby *hereby* guaranteed. And whereas it is apprehended by the Cherokees that in the above cession there is not contained a sufficient quant'y of land for the accommodation of the whole nation on their removal west of the Mississippi, the United States, in consideration of the sum of five hundred thousand dollars, therefore, hereby covenant and agree to convey to the said Indians and their descendants, by patents, in fee simple, the following additional tract of land situated between the west line of the State of Missouri, and the Osage reservation: Beginning at the southeast corner of the same, and runs north along the east line of the Osage lands fifty miles to the northeast corner thereof; and thence east to the west line of the State of Missouri; thence with said line south fifty miles; thence west to the place of beginning; estimated to contain eight hundred thousand acres
88 of land; but it is expressly understood that if any of the lands assigned the Quapaws shall fall within the aforesaid bounds, the same shall be reserved and excepted out of the lands above granted, and a pro rata reduction shall be made in the price to be allowed to the United States for the same by the Cherokees.

"ARTICLE 3. The United States also agree that the lands above ceeded

In witness whereof the said parties have hereto set their signatures this the eighth day of June, A. D. 1868, at Washington.

82 (Signed) O. H. BROWNING,
Secretary of the Interior.

(Signed) JAMES F. JOY. [SEAL.]

The assignment and relinquishment within mentioned are recorded in trust funds record "B," page 243.

Memorandum.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., June 8, 1868.

It being uncertain how much of the (800,000) acres will be taken by actual settlers under the terms of the treaty, and supplemental article, ratified June 6th, instant, it is understood as soon as the number of acres so taken shall be ascertained, it shall be stated and put upon the back of this contract, as well as certified to Mr. Joy, that the amount he has to pay for and the amount of his annual interest may be fixed and settled, to avoid questions on the subject.

(Signed) O. H. BROWNING,
Secretary of the Interior.

83 DEPARTMENT OF THE INTERIOR.

I, Columbus Delano, Secretary of the Interior, do hereby certify that the foregoing is a full, true, & complete copy of a contract entered into on the 8th day of June, 1868, between Orville H. Browning, Secretary of the Interior, by and on behalf of the United States, of the one part, and James F. Joy, of the other part, and also of the endorsements made upon said contract.

In witness whereof I have hereunto set my hand, and caused the seal of said Department to be affixed, on this 14th day of November, A. D. 1870.

[SEAL.] C. DELANO.

(Endorsed:) No. 384. Peter F. Holden vs. James F. Joy. Exhibit "D." Contract between James F. Joy & the Sec't'y of the Interior. Filed May 26, 1871. A. S. Thomas, clerk.

84 EXHIBIT "E."

To all to whom these presents shall come, greeting:

Whereas by certain treaties made by the United States of America with the Cherokee Nation of Indians, of the 6th of May, one thousand eight hundred and twenty-eight; the 14th of February, one thousand eight hundred and thirty-three; and the 29th of December, one thousand eight hundred and thirty-five; it was stipulated and agreed, on the part of the United States, that, in consideration of the promises mentioneed in the said treaties respectively, the United States should guarantee, secure, and convey by patent to the said Cherokee Nation certain tracts of land, the description of which tracts, and the terms and conditions on which they were to be conveyed *and* set forth in the second and third articles of the treaty of the 29th of December, one thousand eight hundred and thirty-five, in the words following, that is to say:

"ARTICLE 2. Whereas by the treaty of May 6, one thousand eight

hundred and twenty-eight, and the supplementary treaty thereto of February 14, one thousand eight hundred and thirty-three, with
85 the Cherokees west of the Mississippi, the United States guaranteed and secured, to be conveyed by patent to the Cherokee Nation of Indians, the following tract of country: Beginning at a point on the old western territorial line of Arkansas Territory, being twenty-five miles north from the point where the territorial line crosses the Arkansas River; thence running from said north point south, on the said territorial line, where the said territorial line crosses Verdigris River; thence down said Verdigris River to the Arkansas; thence down said Arkansas to a point where a stone is placed, opposite the east or lower banks of Grand River, at its junction with the Arkansas; thence running south forty-four degrees west, one mile; thence in a straight line to a point four miles northerly from the mouth of the north fork of the Canadian; thence along the said four-mile line, to the Canadian; thence down the Canadian to the Arkansas; thence down the Arkansas to a point on the Arkansas, where the eastern Choctaw boundary
86 strikes said river, and running thence with western line of Arkansas Territory, as now defined, to the southwest corner of Missouri; thence along the western Missouri line to the land assigned the Senecas; thence on the south line of the Senecas to the Grand River; thence up said Grand River as far as the south line of the Osage reservation extended, if necessary; thence up and between said south Osage line, extended west if necessary, and a line drawn due west from the point of beginning to a certain distance west, at which a line running north and south from said Osage line to said due west line, will make seven millions of acres within the whole described boundaries.

"In addition to the seven millions of acres of land thus provided for and bounded, the United States further guarantee to the Cherokee Nation a perpetual outlet west, and a free and unmolested use of all the country west of the western boundary of said seven millions of acres, as far west as the sovereignty of the United States, and their right of soil extend: *Provided, however*, That if the saline or salt plain
87 on the western prairie shall fall within said limits prescribed for said outlet, the right is reserved to the United States to permit other tribes of red men to get salt on said plain in common with the Cherokees; and letters-patent shall be issued by the United States as soon as practicable for the land hereby *hereby* guaranteed. And whereas it is apprehended by the Cherokees that in the above cession there is not contained a sufficient quant'y of land for the accommodation of the whole nation on their removal west of the Mississippi, the United States, in consideration of the sum of five hundred thousand dollars, therefore, hereby covenant and agree to convey to the said Indians and their descendants, by patents, in fee simple, the following additional tract of land situated between the west line of the State of Missouri, and the Osage reservation: Beginning at the southeast corner of the same, and runs north along the east line of the Osage lands fifty miles to the northeast corner thereof; and thence east to the west line of the State of Missouri; thence with said line south fifty miles; thence west to the place of beginning; estimated to contain eight hundred thousand acres
88 of land; but it is expressly understood that if any of the lands assigned the Quapaws shall fall within the aforesaid bounds, the same shall be reserved and excepted out of the lands above granted, and a pro rata reduction shall be made in the price to be allowed to the United States for the same by the Cherokees.

"ARTICLE 3. The United States also agree that the lands above ceeded

by the treaty of February 14, one thousand eight hundred and thirty-three, including the outlet, and those ceded by this treaty, shall all be included in one, executed to the Cherokee Nation of Indians by the President of the United States, according to the provisions of the act of May 28, one thousand eight hundred and thirty.

"It is, however, agreed that the military reservation at Fort Gibson shall be held by the United States; but should the United [States] abandon said post, and have no further use for the same, it shall revert to the Cherokee Nation. The United States shall always have the right to make and establish such post, and military roads and posts in any part of the Cherokee country as they may deem proper, for the interest and protection of the same, and the free use of as much land,
89 timber, fuel and materials of all kinds, for the construction and support of the same as may be necessary: *Provided*, That if the private rights of individuals are interfered with, a just compensation therefor shall be made."

And whereas the United States have caused the said tract of seven millions of acres, together with the said perpetual outlet, to be surveyed in one tract, the boundaries whereof are as follows:

Beginning at a mound of rocks four feet square at base and four and a half feet high, from which another mound of rocks bears south one chain, and another mound of rocks bears west one chain, on what has been denominated the old western territorial line of Arkansas Territory, twenty five miles north of Arkansas River; thence south twenty-one miles and twenty-eight chains to a post on the northeast bank of the Verdigris River, from which a hackberry, fifteen inches in diameter, bears south sixty-one degrees thirty-one minutes east, forty-three links, marked C. H. L., and a cottonwood, forty-two inches in diameter, bears south twenty-one degrees fifteen minutes east, fifty links, marked
90 C. R. K. L.; thence down the Verdigris River on the northeast bank, with its meanders, to the junction of the Verdigris and Arkansas Rivers; thence from the lower bank of Verdigris River on the north bank of Arkansas River south forty-four degrees thirteen minutes east, fifty-seven chains, to a post on the south bank of the Arkansas River, opposite the eastern bank of Neosho or Grand River, at its junction with the Arkansas, from which a red-oak, thirty-six inches in diameter, bears south seventy-five degrees forty-five minutes west, twenty-four links, and a hickory, twenty-four inches diameter, bears south eighty-nine degrees east, four links; thence south fifty-three degrees west, one mile, to a post from which a rock bears north fifty-three degrees east, fifty links, and a rock bears south eighteen degrees eighteen minutes west, fifty links; thence south eighteen degrees eighteen minutes west, thirty-three miles twenty-eight chains and eighty links to a rock, from which another rock bears north eighteen degrees eighteen minutes east, fifty links, and another rock bears south fifty links; thence south four miles to a post on the lower bank of the north fork of Canadian
91 River, at its junction with Canadian River, from which a cottonwood, twenty-four inches diameter, bears north eighteen degrees east, forty links, and a cottonwood, fifteen inches diameter, bears south nine degrees east, fourteen links; thence down the Canadian River on its north bank to its junction with Arkansas River; thence down the main channel of Arkansas River to the western boundary of the State of Arkansas, at the northern extremity of the eastern boundary of the lands of the Chocktaws, on the south bank of Arkansas River, four chains and fifty-four links east of Fort Smith; thence north seven degrees twenty-five minutes west, with the western boundary of the State of Arkansas, seventy-six

miles sixty-four chains and fifty links, to the southwest corner of the State of Missouri; thence north, on the western boundary of the State of Missouri, eight miles forty-nine chains and fifty links to the north bank of Cowskin or Seneca River, at a mound six feet square at base and five feet high, in which is a post, marked on the south side Cor. N. Ch. Ld.; thence west, on the southern boundary of the lands of the
92 Senecas, eleven miles and forty-eight chains to a post on the east bank of Neosho River, from which a maple, eighteen inches in diameter, bears south thirty-one degrees east seventy-two links; thence up Neosho River, with its meanders, on the east bank, to the southern boundary of the Osage lands, thirty-six chains and fifty links, west of the southeast corner of the lands of the Osages, witnessed by a mound of rocks on the west bank of Neosho River; thence west on the southern boundary of the Osage lands to the line dividing the territory of the United States from that of Mexico, two hundred and eighty-eight miles thirteen chains and sixty-six links, to a mound of earth six feet square at base and five and a half feet high, in which is deposited a cylinder of charcoal twelve inches long, four inches diameter; thence south along the line of the territory of the United States and of Mexico, sixty miles and twelve chains, to a mound of earth six feet square at base and five and a half feet high, in which is deposited a cylinder of charcoal eighteen inches long and three inches diameter; thence east along the northern boundary of the Creek
93 lands two hundred and seventy-three miles fifty-five chains and sixty-six links to the beginning, containing within the survey thirteen millions five hundred and seventy-four thousand one hundred and thirty-five acres and fourteen hundredths of an acre.

And whereas the United States have also caused the said tract of eight hundred thousand acres to be surveyed, and have ascertained the boundaries thereof to be as follows:

Beginning at the southeast corner of Osage lands, described by a rock from which a red-oak, twenty inches diameter, bears south twenty-seven degrees east, seventy-six links, and a burr-oak, thirty inches diameter, bears south fifty-nine degrees west, one chain, and another burr-oak, thirty inches diameter, bears north eight degrees west, one chain and thirty-seven links, and another burr-oak, forty inches diameter, bears north thirty degrees west, one chain and eighty-one links, and running east twenty-five miles to a rock on the western line of the State of Missouri, from which a post-oak, ten inches diameter, bears north forty-eight degrees thirty minutes east, four chains, and a post-oak, twelve inches diameter, bears south sixty-two
94 degrees east, five chains; thence north, with the western boundary of the State of Missouri, fifty miles, to a mound of earth five feet square at base, and four and a half feet high; thence west twenty-five miles to the northeast corner of the lands of the Osages, described by a mound of earth six feet square at base, and five feet high; thence south along the eastern boundary of the Osage lands fifty miles to the beginning, containing eight hundred thousand acres.

Therefore, in execution of the agreements and stipulation contained in the said several treaties, the United States have given and granted, and by these presents do give and grant, unto the said Cherokee Nation, the two tracts of land so surveyed and hereinbefore described, containing the whole fourteen millions three hundred and seventy-four thousand one hundred and thirty-five acres and fourteen hundredths of an acre: To have and to hold the same, together with all the rights, privileges and appurtenances thereto belonging, to the said Cherokee Nation

forever, subject, however, to the right of the United States to per-
95 mit other tribes of red men to get salt on the salt plain on the western prairie, referred [to] in the second article of the treaty of the twenty-ninth of December, one thousand eight hundred and thirty-five, which salt plain has been ascertained to be within the limits prescribed for the outlet agreed to be granted by said article, and subject also to all the other rights reserved to the United States in and by the articles hereinbefore recited, to the extent and in the manner in which the said rights are so reserved, and subject also to the condition provided by the act of Congress of the twenty-eighth of May, one thousand eight hundred and thirty, referred to in the above-recited third article, and which condition is, that the lands hereby granted shall revert to the United States if the said Cherokee Nation becomes extinct, or abandons the same.

In testimony whereof I, Martin Van Buren, President of the United States of America, have caused the letters to be made patent,
96 and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the thirty-first day of December, in the year of our Lord one thousand eight hundred and thirty-eight, and of the independence of the United States the sixty-third.

[L. S.] M. VAN BUREN.

By the President:

H. M. GARLAND,
Recorder of the General Land Office.

(Endorsed:) No. 384. Peter F. Holden vs. James F. Joy. Exhibit "E." Letters-patent from President V. Buren. Filed May 26, 1871. A. S. Thomas, clerk.

97 EXHIBIT "F."

UNITED STATES OF AMERICA.

STATE OF KANSAS, *County of Shawnee, ss:*

I, Peter J. Holden, claiming the right of pre-emption to the southeast quarter of section 17th, in township No. thirty-one, (31,) of range No. (25) twenty-five east, in Crawford County, Kansas, do solemnly swear that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States; (that I am a citizen of the United States, over the age of twenty-one, and am the head of a family, and I settled upon said land to improve the same for agricultural purposes;) nor have I settled upon said land *the same* upon speculation, but in good faith to appropriate the same to my own exclusive use and benefit; that I have not *I have not*, directly or indirectly, made any contract or agreement, in any way or manner, with any person whatever, by which the title I may acquire under the United States should enure, in whole or in part, to the benefit of any person except myself.

98 PETER F. HOLDEN.

Subscribed and sworn to before me this 26th day of May, A. D. 1871.

[SEAL.] W'M HALL JENKINS,
Notary Public Shawnee Co., Kans.

(Endorsed:) No. 384. In U. S. circuit court. Peter F. Holden vs.

James F. Joy. Pre-emptor's affidavit. Exhibit "F." Filed May 26, 1871. A. S. Thomas, clerk.

99 EXHIBIT "G."

Treaty with the Cherokees, October 7th 1861.

A treaty of friendship and alliance made and concluded at Tahlequah, in the Cherokee Nation, on the 7th day of October, in the year of our Lord one thousand eight hundred and sixty-one, between the Confederate States of America, by Albert Pike, commissioner with plenary powers of the Confederate States, of the one part, and the Cherokee Nation of Indians, by John Ross, the principal chief, Joseph Verner, assistant principal chief, James Brown, John Drew, and William P. Ross, executive councillors, constituting, with the principal and assistant principal chiefs, the executive council of the nation, and authorized to enter into this treaty by a general convention of the Cherokee people, held at Tahlequah, the seat of government of the Cherokee Nation, on the twenty-first day of August, in the year of our Lord one thousand eight hundred and sixty-one, together with Lewis Ross, Thomas Pegg, and Richard Fields, commissioners, selected and appointed by the principal
100 chief, with the advice and consent of the executive council, to assist in negotiating the same, of the other part. Oct. 7, 1861.

The congress of the Confederate States of America having, by an "Act for the protection of certain Indian tribes," approved the 21st day of May, in the year of our Lord one thousand eight hundred and sixty-one, offered to assume and accept the protectorate of the several nations and tribes of Indians occupying the country west of Arkansas and Missouri, and to recognize them as their wards, subject to all the rights, privileges, and immunities, titles, and guarantees, with each of said nations and tribes, under treaties made with them by the United States of America; and the Cherokee Nation of Indians having assented thereto upon certain terms and conditions: Preamble.

Now, therefore, the said Confederate States of America, by Albert Pike, their commissioner, constituted by the president, under authority of the act of congress in that behalf, with plenary powers for these purposes, and the
101 Cherokee Nation, by the principal chief, executive council, and commissioners aforesaid, has agreed to the following articles, that is to say:

ARTICLE I. There shall be perpetual peace and friendship, and an alliance, offensive and defensive, between the Confederates States of America and all of their States and people, and the Cherokee Nation and all the people thereof. Perpetual peace and friendship.

ARTICLE II. The Cherokee Nation of Indians acknowledges itself to be under the protection of the Confederate States of America, and of no other power or sovereign whatever, and does hereby stipulate and agree with them that it will not hereafter contract any alliance, or enter into any The Cherokees acknowledge themselves to be under the protection of the C. S.

compact, treaty, or agreement with any individual State, or with a foreign power; and the said Confederate States do hereby assume and accept the said protectorate, and recognize the said Cherokee Nation as their ward; and by the consent of the said nation now here freely given, the country whereof it is proprietor in fee, as the same is hereinafter described, is annexed to the Confederate States in the same manner and to the same extent as it was annexed to the United States of America before that Government was dissolved, with such modifications, however, of the terms of annexation, and upon such conditions as are hereinafter expressed, in addition to all the rights, priveleges, immunities, titles, and guarantees, with or in favor of the said nation, under treaties made with it, and under the statutes of the United States of America.

The C. S. assume the protectorate.

Cherokee country annexed to the C. S.

102

C. S. not to enter into compacts except with the constitutional authorities of the Cherokee Nation.

And, in consequence of the obligations imposed on the Cherokee people by this article, it is agreed on the part of the Confederate States that they will not, at any time, enter into any compact, treaty, or agreement with any individuals or party in the Cherokee Nation, but only with the constitutional authorities of the same, that will in any way interfere with, or affect any of the national rights of, the Cherokee people.

Protection promised.

ARTICLE III. The Confederate States of America having accepted the said protectorate, hereby solemnly promise the said Cherokee Nation never to desert or to abandon it, and that, under no circumstances, will they permit the Northern States, or any other enemy, to overcome them, and sever the Cherokees from the confederacy, but that they will, at any cost, and all hazards, protect and defend them, and maintain unbroken the ties created by identity of interests and institutions, and strengthened and made perpetual by this treaty.

103

Boundaries of the Cherokee country.

ARTICLE IV. The boundaries of the Cherokee country shall forever continue and remain the same as they are defined by letters-patent therefor, given by the United States to the Cherokee Nation, on the thirty-first day of December, in the year of our Lord, one thousand eight hundred and thirty-eight, which boundaries are therein defined as follows:

Beginning at a mound of rocks four feet square at base and four and a half feet high, from which another mound of rocks bears south one chain, and another mound of rocks bears west one chain, on what has been denominated the old western territorial line of Arkansas Territory, twenty-five miles north of Arkansas River; thence south twenty-one miles and twenty-eight chains, to a post on the northeast bank of the Verdigris River, from which a hackberry, fifteen inches diameter, bears south sixty-one degrees thirty-one minutes east, forty-three links, marked C. H. L., and a cottonwood, forty-two inches diameter, bears south twenty-one degrees fifteen minutes east, fifty links, marked C. R. R. L.; thence down the Verdigris River on the northeast bank, with its meanders, to the junction of Verdigris and Arkansas rivers; thence from the lower bank of Verdigris River, on the north bank of

104

Arkansas River, south forty-four degrees thirteen minutes east, fifty-seven chains, to a post on the south bank of Arkansas, opposite the eastern bank of Neosho River, at its junction with Arkansas, from which a red-oak, thirty-six inches diameter, bears south seventy-five degrees forty-five minutes west, twenty-four links, and a hickory, twenty four inches diameter, bears south eighty-nine degrees east, four links; thence south fifty-three degrees west, one mile to a post, from which a rock bears north fifty-three degrees east, fifty links, and a rock bears south eighteen degrees eighteen minutes west, fifty links; thence south eighteen degrees
105 eighteen minutes west, thirty-three miles twenty-eight chains and eighty links, to a rock, from which another rock bears north eighteen degrees eighteen minutes east, fifty links, and another rock bears south fifty links; thence south four miles to a post on the lower bank of the North Fork of Canadian River, at its junction with Canadian River, from which a cottonwood, twenty-four inches diameter, bears north eighteen degrees east, forty links, and a cottonwood, fifteen inches diameter, bears south nine degrees east, fourteen links; thence down the Canadian River, on its north bank, to its junction with Arkansas River; thence down the main channel of Arkansas River to the western boundary of the State of Arkansas, at the northern extremity of the eastern boundary of the lands of the Choctaws, on the south bank of Arkansas River, four chains and fifty-four links east of Fort Smith; thence north seven degrees twenty-five minutes west, with the western boundary of the State of Arkansas, seventy-six miles sixty four chains and fifty links, to the southeast corner of the State of Missouri; thence north on the western boundary of the State of Missouri, eight miles forty-nine chains and fifty
106 links, to the north bank of Cowskin or Seneca River, at a mound six feet square at base, and five feet high, in which is a post marked on the south side Cor. Ch. Ld; thence west on the northern boundary of the lands of the Senecas, eleven miles and forty chains, to a post on the east bank of Neosho River, from which a maple, eighteen inches diameter, bears south thirty-one degrees east, seventy-two links; thence up Neosho River with its meanders on the east bank, to the southern boundary of Osage lands, thirty-six chains and fifty links west of the southeast corner of the lands of the Osages, witnessed by a mound of rocks on the west bank of Neosho River; thence west, on the southern boundary of the Osage lands, to the line dividing the territory of the United States from that of Mexico, two hundred and eighty-eight miles thirteen chains and sixty-six links to a mound of earth six feet square at base, and five and a half feet high, in which is deposited a cylinder of charcoal twelve inches long and four inches diameter; thence south along the line of the territory of the
107 United States and of Mexico, sixty miles and twelve chains, to a mound of earth, six feet square at base and five and a half feet high, in which is deposited a cylinder of charcoal eighteen inches long and three inches diameter; thence east along the northern boundary of Creek

lands, two hundred and seventy-three miles fifty-five chains and sixty-six links, to the beginning; containing within the survey thirteen millions five hundred and seventy-four thousand one hundred and thirty-five acres and fourteen hundredths of an acre.

Title of the U. S. in the Cherokee country vested in the C. S.

ARTICLE V. The Cherokee Nation hereby gives its full, free, and unqualified assent to those provisions of the act of congress of the Confederate States of America, entitled "An act for the protection of certain Indian tribes," approved the 24th day of May, in the year of our Lord one thousand eight hundred and sixty-one, whereby it was declared that all reversionary and other interest, right, title, and proprietorship of the United States in, unto, and over the Indian country, in which that of the said Cherokee Nation is included, should pass to and vest in the
108 Confederate States, and whereby the president of the Confederate States was authorized to take military possession and occupation of all said country, and whereby all the laws of the United States, with the exception thereinafter made applicable to and in force in said country and not inconsistent with the letter or spirit of any treaty stipulations entered into with the Cherokee Nation, were enacted, continued in force and declared to be in force in said country, as laws and statutes of the Confederate States: *Provided, however*, and it is hereby agreed between the said parties that whatever in the said laws of the United States contained, is or may be contrary to or inconsistent with any article or provision of this treaty, is to be of none effect henceforward, and shall, upon the ratification hereof, be deemed and taken to have been repealed and annulled, as of the present date, and this assent, as thus qualified and conditioned, shall relate to and be taken to have been given upon the said day of the approval of the said act of congress.

Proviso.

109 ARTICLE VI. The Confederate States of America, do hereby solemnly guarantee to the Cherokee Nation, to be held by it to its own use and behoof in fee-simple forever, the lands included within the boundaries defined in article four of this treaty, to be held by the people of the Cherokee Nation in common as they have heretofore been held, if the said nation shall so please, but with power of making partition thereof and dispositions of parcels of the same by virtue of laws of said nation, duly enacted and approved by a majority of the Cherokee people in general convention assembled; by which partition or sale title in fee-simple, absolute, shall vest in parceners and purchasers whenever it shall please said nation, of its own free will and accord, and without solicitation from any quarter so to do, which solicitation the Confederate States hereby solmenly agree never to use; and the title and tenure hereby guaranteed to the said nation is and shall be subject to no other restrictions, reservations, or conditions whatever, than such as are hereinafter specially expressed.

Partition and sale of lands.

Lands not to be sold or ceded to any foreign nation or to any state or government.

110 ARTICLE VII. None of the lands hereby guaranteed to the Cherokee Nation, shall be sold, ceeded, or otherwise disposed of, to any foreign nation, or to any state

or government whatever; and in case any such sale, cession, or disposition should be made without the consent of the Confederate States, all the said lands shall thereupon revert to the Confederate States.

No state or territory to pass laws for the Cherokees.

ARTICLE VIII. The Confederate States of America do hereby *agree* solemnly agree and bind themselves, that no state or territory shall ever pass laws for the government of the Cherokee Nation, and that no portion of the lands guaranteed to it shall ever be embraced or included within or annexed to any territory or province, nor shall any attempt ever be made, except upon the free, voluntary, and unsolicited application of said nation, to erect its said country, by itself or with any other, into a State or any other territorial or political organization, or to incorporate it into any State previously created.

Not to be incorporated into any other territorial or political organization.

Navigable streams free to the Cherokees.

111 ARTICLE IX. All navigable streams of the Confederate States and of the Indian country, shall be free to the people of the Cherokee Nation, who shall pay no higher toll or tonnage duty, or other duty, than the citizens of the Confederate States; and the citizens of that nation, living upon the Arkansas River, shall have, possess, and enjoy upon that river the same ferry priveleges to the same extent, in all respects, as citizens of the Confederate States on the opposite side thereof, subject to no other or a different tax or charge than they.

Ferry privileges upon Arkansas River.

Indians of other nations or tribes may be received as members.

ARTICLE X. The Cherokee Nation may, by act of its legislative authorities, receive and incorporate in the nation as members thereof, or permit to reside and settle upon the national lands, such Indians of any other nation or tribe as to it may seem good; and may sell them portions of its lands and receive to its own use the consideration therefor; and the nation alone shall determine who are members and citizens of the nation, entitled to vote at elections and share in annuities.

Who entitled to vote at elections and share in annuities.

Proviso.

112 *Provided*, That when persons of another Indian nation or tribe shall once have been received as members of the nation, they shall not be disfranchised or subjected to any other restrictions upon the right of voting, than such as shall apply to the Cherokees themselves.

But no Indians not settled in the Cherokee country shall be permitted to come therein to reside without the consent and permission of the legislative authority of the nation.

Right of self-government and full jurisdiction over persons and property.

ARTICLE XI. So far as may be compatible with the constitution of the Confederate States, and with the laws made, enacted, or adopted in conformity thereto, regulating trade and intercourse with the Indian tribes, as the same are modified by this treaty, the Cherokee Nation shall possess the otherwise unrestricted right of self-government, and full jurisdiction, judicial and otherwise, over persons and property within its limits, excepting only such white persons as are not by birth, adoption, or otherwise, members of the Cherokee Nation; and that there may be no doubt

Exception.

113 as to the meaning of this exception, it is hereby declared that every white person who, having married a Cherokee woman, resides in said Cherokee country, or who, without intermarrying, is permanently domiciled there-

White person who marries a Cherokee woman or is permanently

domiciled in the Cherokee country taken to be a member of the nation.

in, with the consent of the authorities of the nation, and votes at elections, is to be deemed and taken to be a member of the said nation, within the true intent and meaning of this article; and that the exception contained in the laws for the punishment of offenses committed in the Indian country, to the effect that they shall not extend or apply to offenses committed by one Indian against the person or property of another Indian, shall be so extended and enlarged by virtue of this article when ratified and without further legislation, as that none of said laws shall extend and apply to any offence committed by any Indian, or negro, or mulatto, or by any white person, so by birth, adoption, or otherwise a member of the Cherokee Nation, against the person or property of any Indian, negro, or mulatto, or any such white person, when the same shall be committed within the limits of the said Cherokee Nation as hereinbefore defined; but all such persons shall be subject to the laws of the Cherokee Nation, and to prosecution and trial before its tribunals, and punishment according to such laws, in all respects like native members of the said nation.

Exception in the law for the punishment of offenses committed in the Indian country extended and enlarged.

Intruders to be removed.

ARTICLE XII. All persons not members of the Cherokee Nation, as such membership is hereinbefore defined, who may be found in the Cherokee country, shall be considered as intruders, and be removed and kept out of the same, either by the civil officers of the nation under the direction of the executive or legislature, or by the agent of the Confederate States, for the nation, who shall be authorized to demand, if necessary, the aid of the military for that purpose, with the following exceptions only, that is to say, such individuals with their families as may be in the employ of the government of the Confederate States, all persons peaceably traveling or temporarily sojourning in the country, or trading therein under license from the proper authority, and such persons as may be permitted by the legislative authority of the Cherokee Nation to reside within its limits, without becoming members of the said nation.

Exceptions.

Reservation of land for Indian agency.

ARTICLE XIII. A tract of two sections of land in the said nation, to be selected by the president of the Confederate States, or such officer or person as he may appoint, in conjunction with the authorities of the Cherokee Nation, at such a point as they may deem most proper, is hereby ceded to the Confederate States for the purpose of an agency; and when selected shall be within their sole and exclusive jurisdiction, except as to offenses committed therein by one member of the Cherokee Nation against the person or property of another member of the same: *Provided*, That whenever the agency shall be discontinued, the tract so selected therein shall revert to the said nation, with all the buildings that may be thereupon: *And provided also*, That the president, conjointly with the authorities of the nation, may at any time select in lieu of said reserve any unoccupied tract of land in the nation, or in any part thereof, not greater in extent than two sections, as a site for the agency of the nation, which shall in such case constitute the

Proviso.

Further proviso.

reserve, and that first selected shall thereupon revert to the Cherokee Nation.

Forts and military posts, and military and post roads.

ARTICLE XIV. The Confederate States shall have the right to build, establish, and maintain such forts and military posts, temporary or permanent, and such military and post roads as the president may deem necessary in the Cherokee country; and the quantity of one mile square of land, including each fort or post, shall thereby vest as by cession in the Confederate States, and be within their sole and exclusive jurisdiction except as to offenses committed therein by members of the Cherokee Nation against the persons or property of other members of the same, so long as such fort or post is occupied; but no greater quantity of land beyond one mile square shall be used or occupied nor any greater quantity of timber felled than of each is actually requi-
117 site, and if in the establishment of such fort, post, or road, or of the agency, the property of any individual member of the Choctaw Nation, other than land, timber, stone, and earth be taken, destroyed, or impaired, just and adequate compensation shall be made by the Confederate States.

No person to settle or raise stock within certain limits.

ARTICLE XV. No person shall settle or raise stock within the limits of any post or fort, or of the agency reserve, except such as are or may be in the employment of the Confederate States in some civil or military capacity; or such as being subject to the jurisdiction and laws of the Cherokee Nation are permitted by the commanding officer of the fort or post to do so thereat, or by the agent to do so upon the agency reserve.

Agent & interpreter.

ARTICLE XVI. An agent of the Confederate States for the Cherokee Nation, and an interpreter, shall continue to be appointed, both of whom shall reside at the agency. And whenever a vacancy shall occur in either of the said offices, the authorities of the nation shall be con-
118 sulted as to the person to be appointed to fill the same, and no one shall be appointed against whom they in good faith protest, and the agent may be removed, on petition and formal charges preferred by the constituted authorities of the nation, the president being satisfied, upon full investigation, that there is sufficient cause for such removal.

Vacancy in either of said offices —how filled.

Protection from invasion & aggression.

ARTICLE XVII. The Confederate States shall protect the Cherokees from hostile invasion and from aggression by other Indians and white persons not subject to the laws and jurisdiction of the Cherokee Nation, and for all injuries resulting from such invasion or aggression full indemnity is hereby guaranteed to the party or parties injured, out of the treasury of the Confederate States, upon the same principal and according to the same rules upon which white persons are entitled to indemnity for injuries or aggressions upon them committed by Indians.

Indemnity for injuries.

Prevention of intrusion upon the lands of the Cherokees and removal of improper persons.

119 ARTICLE XVIII. It is further agreed between the parties that the agent of the Confederate States, upon the application of the authorities of the Cherokee Nation, will not only resort to every proper legal remedy, at the expense of the Confederate States, to prevent intrusion upon

the lands of the Cherokees, and to remove dangerous or improper persons, but he shall call upon the military power, if necessary, and to that end all commanders of military posts in the said country shall be required and directed to afford him, upon his requisition, whatever aid may be necessary to effect the purposes of this article.

Property taken by stealth or force.

ARTICLE XIX. If any property of the Cherokees be taken by citizens of the Confederate States by stealth or force, the agent, on complaint made to him in due form, by affidavit, shall use all proper legal means and remedies in any State, where the offender may be found, to regain the property or

Remedy.

compel a just remuneration; and on failure to procure redress, payment shall be made for the loss sustained,

120 by the Confederate States, upon the report of the agent, who shall have power to take testimony and examine witnesses in regard to the wrong done and the extent of the injury.

License to traders.

ARTICLE XX. No person shall be licensed to trade with the Cherokees except by the agent, and with the advice and consent of the national council. Every such trader shall execute

Bond.

bond to the Confederate States, in such form and manner as was required by the United States, or as may be required by

Tax on licensed traders.

the bureau of Indian affairs. The authorities of the Cherokee Nation may by a general law, duly enacted, levy and collect on all licensed traders in the nation, a tax of not more than one-half of one per cent. on all goods, wares, and merchandise brought by them into the Cherokee country for sale, to be collected whenever such goods, wares, and merchandise are introduced, and estimated upon the first cost of the same at the place of purchase, as the same shall be shown by the copies of the invoices filed with the agent. No ap-

Appeal from decision refusing license.

121 peal shall hereafter lie from the decision of the agent or council refusing a license, to the commissioner of Indian affairs, or elsewhere, except only to the superintend-

Who may trade and what articles may be sold without license.

ent, in case of a refusal by the agent. And no license shall be required to authorize any member of the Cherokee Nation to trade in the Cherokee country, nor to authorize any person to sell flour, meats, fruits, and other provisions, or stock, wagons, agricultural implements, or arms, brought from any of the Confederate States into the country; nor shall any tax be levied upon such articles, or the proceeds of the sale

What goods ear forfeited when exposed to sale without license.

thereof. And all other goods, wares, and merchandise, exposed to sale by a person not qualified, without a license, shall be forfeited, and be delivered, and given to the authorities of the nation, as also shall all wines and liquors illegally introduced.

Restrictions on the right of the Cherokees to sell and dispose of personal property removed.

ARTICLE XXI. All restrictions contained in any treaty made with the United States, or created by any law or regulation of the United States, upon the limited right of any member of the Cherokee Nation, to sell and dispose of, to any person whatever, any chattel or other article of per-

122 sonal property are hereby removed, and no such restrictions shall hereafter be imposed, except by their own legislation.

May take, hold, & pass lands by purchase or descent.

ARTICLE XXII. It is hereby further agreed by the Confederate States that all the members of the Cherokee Nation

as hereinbefore defined, shall be henceforward competent to take, hold, and pass by purchase or descent, lands in any of the Confederate States heretofore or hereafter acquired by them.

Cherokee country erected into a judicial district, to be called the Cha-lah-ki district.

ARTICLE XXIII. In order to secure the due enforcement of so much of the laws of the Confederate States in regard to criminal offenses and misdemeanors as is or may be in force in the said Cherokee country, and to prevent the Cherokees from being further harassed by judicial proceedings had in foreign courts, and before juries not of the vicinage, the said country is hereby erected into and constituted a judicial district, to be called the Cha-lah-ki district, for the special purposes and jurisdiction herein-

123 after provided, and there shall be created, and semi-annually held within such district at Tah-le-quah, or in case of the removal of the seat of government of the nation, then at such place as may become the seat of government, a district court of the Confederate States, with the powers of a circuit court, so far as the same shall be necessary to carry out the provisions of this treaty, and with jurisdiction co-extensive with the limits of such district in such matters, civil and criminal, to such extent and between such parties as may be prescribed by law, and in conformity to the terms of this treaty.

District court for such district, where to be held.

Jurisdiction co-extensive with the limits of the district.

Laws declared to be in force in the Cherokee country.

ARTICLE XXIV. In addition to so much and such parts of the acts of Congress of the United States, enacted to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, as have been re-enacted and continued in force by the Confederate States, and as are not inconsistent with the provisions of this treaty, so much of the laws of the Confederate States as provides for the punishment of crimes amounting to felony, at common

124 law or by statute, against the laws, authority, or treaties of the Confederate States, and over which the courts of the Confederate States have jurisdiction, including the counterfeiting coin of the United States, or of the Confederate States, or the securities of the Confederate States, and so much of the said laws as provides for punishing violators of the neutrality laws and resistance to the process of the Confederate States, and all the acts of the provisional congress providing for the common defense and welfare, so far as the same are not locally inapplicable, shall hereafter be in force in the Cherokee country, and the said district court shall have exclusive jurisdiction to try, condemn, and punish offenders against any such laws, to adjudge and pronounce sentence, and cause execution thereof to be done in the same manner as is done in any other district court of the Confederate States.

Admiralty jurisdiction of the district for the Cha-lah-ki district.

ARTICLE XXV. The said district court of the Confederate States of America for the district of Cha-lah-ki shall

125 also have the same admiralty jurisdiction as other district courts of the confederate courts against any person or persons residing or found within the district, and in all civil suits at law, or in equity, when the matter in controversy is of greater value than five hundred dollars between a citizen or citizens of any State or States of the

Jurisdiction in civil cases.

Confederate States, or any Territory of the same, or an alien or aliens and a citizen or citizens of the said district, or person or persons residing therein, and the Confederate States will, by suitable enactments, provide for the appointment of a judge and other proper officers of the said court, the clerk and marshal being members of the Cherokee Nation, and make all necessary enactments and regulations for the complete establishment and organization of the same, and to give full effect to its proceedings and jurisdiction.

Appointment of judge and other officers of the court.

The court to have no jurisdiction in cases where the offence was committed, or the course of action accrued prior to the signing of this treaty.

ARTICLE XXVI. The said district court shall have no jurisdiction to try and punish any person for any offence committed prior to the day of the signing of this treaty, nor shall any action in law or equity be maintained therein except by the Confederate States, or one of them, when the cause of action shall have accrued before the same day of the signing hereof.

126

Punishment of persons for attempting, without authority, to settle on the lands of the Cherokees.

ARTICLE XXVII. If any citizen of the Confederate States, or any other person not being permitted to do so by the authorities of said nation, or authorized by the terms of this treaty, shall attempt to settle upon any lands of the Cherokee Nation, he shall forfeit the protection of the Confederate States and such punishment may be inflicted upon him, not being cruel, unusual, or excessive, as may have been previously prescribed by the law of the nation.

Who not to pasture stock on their lands.

ARTICLE XXVIII. No citizen or inhabitant of the Confederate States shall pasture stock on the lands of the Cherokee Nation, under the penalty of one dollar per head for all so pastured, to be collected by the authorities of the nation, but their citizens shall be at liberty at all times, and whether for business or pleasure, peaceably to travel the Cherokee country, and to drive their stock to market, or otherwise through the same, and to halt such reasonable time on the way as may be necessary to recruit their stock, such delay being in good faith for that purpose.

Liberty given to travel in their country and drive stock through the same.

127

Cherokees may travel, drive stock, &c., in any of the C. S.

ARTICLE XXIX. It is also further agreed that the members of the Cherokee Nation shall have the same right of traveling, driving stock, and halting to recruit the same, in any of the Confederate States, as is given citizens of the Confederate States by the preceeding article.

How persons employed within the agency reserve may be removed.

ARTICLE XXX. If any person, hired or employed by the agent, or by any other person whatever, within the agency reserve, or any post or fort, shall violate the laws of the nation in such manner as to become an unfit person to continue in the Cherokee country, he or she shall be removed by the superintendent, upon the application of the executive of the nation, the superintendent being satisfied of the truth and sufficiency of the charges preferred.

Surrender of fugitives from justice.

128

ARTICLE XXXI. Any person duly charged with a criminal offense against the laws of either the Creek, Seminole, Choctaw, or Chickasaw nations, and escaping into the jurisdiction of the Cherokee Nation, shall be promptly surrendered upon the demand of the proper authority of the nation within whose jurisdiction the offense shall be alleged to have been committed; and in like manner, any person duly charged with a criminal offense against the laws of the Cherokee Nation, and escaping into the juris-

diction of either of the said nations, shall be promptly surrendered upon the demand of the proper authority of the Cherokee Nation.

ARTICLE XXXII. The Cherokee Nation shall promptly apprehend and deliver up all persons duly charged with any crime against the laws of the Confederate States, or of any State thereof, who may be found within its limits, on demand of any proper officer of the State, or of the Confederate States, and in like manner, any person duly
129 charged with a criminal offense against the laws of the Cherokee Nation, and escaping into the jurisdiction of a State, shall be promptly surrendered on demand of the executive of the nation.

Any of the Cherokees indicted in any court of the C. S., or State court, entitled to process for witnesses.

ARTICLE XXXIII. Whenever any person, who is a member of the Cherokee Nation, shall be indicted for any offense, in any court of the Confederate States, or of a State, he shall be entitled, as of common right, to subpœna, and, if necessary, to compulsory process, for all such witnesses in his behalf as his counsel may think necessary for his defense; and the cost of process for such witnesses, and of service thereof, and the fees and mileage of such witnesses shall be paid by the Confederate States, being afterwards made, if practicable, in case of conviction, of the property of the accused. And whenever the accused is not able to employ counsel, the court shall assign him one experienced counsel for his defense, who shall be paid by the Confederate States a reasonable compensation for his services, to
130 be fixed by the court, and paid upon the certificate of the judge.

Cost of process and fees and mileage of witnesses.

When accused may be assigned counsel.

Rendition of fugitive slaves.

ARTICLE XXXIV. The provisions of all such acts of the Congress of the Confederate States as may be now in force, or as may hereafter be enacted for the purpose of carrying into effect the provisions of the constitution in regard to the re-delivery or return of fugitive slaves or fugitives from labor and service, shall extend to and be in full force within the said Cherokee Nation; and shall also apply to all cases of escape of fugitive slaves from the said Cherokee Nation into any other Indian nation, or into one of the Confederate States; the obligation upon each such nation or state to redeliver such slaves being in every case as complete as if they had escaped from another State, and the mode of procedure the same.

Cherokees compe'nt as witnesses in the courts of the C. S.

ARTICLE XXXV. All persons, who are members of the Cherokee Nation, shall hereafter be competent as wit-
131 nesses in all cases, civil and criminal, in the courts of the Confederate States, unless rendered incompetent from some other cause than their Indian blood or descent.

Faith and credit given to official acts of judicial officers.

ARTICLE XXXVI. The official acts of all judicial officers in the said nation shall have the same effect and be entitled to the like faith and credit everywhere, as the like acts of judicial officers of the same grade and jurisdiction in any of the Confederate States; and the proceedings of the courts and tribunals of the said nation, and copies of the laws, and judicial and other records of the said nation shall be authenticated like similar proceedings of the courts

Authentication of records, laws, &c.

of the Confederate States, and the laws and office records of the same, and be entitled to like faith and credit.

Existing laws, usages, and customs in regard to slavery declared binding.

ARTICLE XXXVII. It is hereby declared and agreed that the institution of slavery in the said nation is legal, and has existed from time imm'orial; that slaves are taken and esteemed to be personal property; that the title to slaves and other property, having its origin in the
132 said nation, shall be determined by the laws and customs thereof; and that the slaves and other personal property of every person domiciled in said nation shall pass and be distributed at his or her death in accordance with the laws, usages, and customs of the said nation, which may be proved like foreign laws, usages, and customs, and shall everywhere be held binding within the scope of their operations.

No ex-post-facto law, or law impairing the obligations of contracts to be enacted.

ARTICLE XXXVIII. No ex-post-facto law, or law impairing the obligation of co tracts, shall ever be enacted by the legislative authority of the Cherokee Nation, nor shall any citizen of the Confederate States, or member of any other Indian [nation] or tribe be disseized of his property, or deprived or restrained of his liberty, or fine, penalty, or forfeiture be imposed on him in the said country, except by the law of the land, nor without due process of law; nor shall any such citizen be in any way deprived of any of the rights guaranteed to all citizens by the consti tution of the Confederate States.

Rights of personal liberty and private property secured.

Post offices.

133 ARTICLE XXXIX. It is further agreed that the congress of the Confederate States shall establish and maintain post offices at the most important places in the Cherokee Nation, and cause the mails to be regularly carried at reasonable intervals to & from the same, at the same rates of postage, and in the same manner as in the Confederate States; and the postmasters shall be appointed from among the citizens of the Cherokee Nation.

Appointment of postmasters.

ARTICLE XL. In consideration of the common interests of the Cherokee Nation and the Confederate States, and of the protection and rights guaranteed to the said nation by this treaty, the Cherokee Nation hereby agrees that it will raise and furnish a regiment of ten companies of mounted men, with two reserve companies, if allowed, to serve in the armies of the Confederate States for twelve months; the men shall be armed by the Confederate States, receive the same pay and allowances as other mounted troops in the service, and not be moved beyond its limits of the Indian country west of Arkansas without their consent.

Cherokees to furnish a regiment, &c., to serve in the army of the C. S.

Arms, pay, and allowances.

Troops for the defence of the Indian country and frontier of the C. S.

134 ARTICLE XLI. The Cherokee Nation hereby agrees to raise and furnish at any future time, upon the requisition of the president, such number of troops for the defense of the Indian country, and of the frontier of the Confederate States, as he may fix, not out of fair proportion to the number of its population, to be employed for such terms of service as the president may determine; and such troops shall receive the same pay and allowances as other troops of the same class in the service of the Confederate States.

Pay and allowances.

ARTICLE XLII. It is further agreed by the said Confederate States that the said Cherokee Nation shall never be required or called upon to pay in land, or otherwise, any part of the expenses of the present war, or of any war waged by or against the Confederate States. Cherokees to pay no part of expenses of present or any future war.

135 ARTICLE XLIII. It is further agreed that after the restoration of peace, the government of the Confederate States will defend the frontiers of the Indian country, of which the Cherokee country is a part, and hold the forts and posts therein with native troops, recruited among the several Indian nations included therein under the command of officers of the Confederate States, in preference to oth' troops. C. S. to defend frontiers of the Indian country and hold the forts & posts.

ARTICLE XLIV. In order to enable the Cherokeee Nation to claim its rights and secure its interests, without the intervention of counsel or agents, it shall be entitled to a delegate to the house of representatives of the Confederate States of America, who shall serve for the term of two years and be a native born citizen of the Cherokee Nation, over twenty-one years of age, and laboring under no legal disability by the law of the said nation, and each delegate shall be entitled to the same rights and privileges as may be enjoyed by delegates from any Territories of the Confederate States to the said house of representatives. Each shall receive such pay and mileage as shall be fixed by the congress of the Confederate States. The first election for delegate shall be held at such time and places and shall be conducted in such manner as shall be prescribed by the principal chief of the Cherokee Nation, to whom returns of such elections shall be made and who shall declare the person having the greatest number of votes to be duly elected, and give him a certificate of election, accordingly, which shall entitle him to his seat. For all subsequent elections, the time, places, and manner of holding them and ascertaining and certifying the result shall be prescribed by the Confederate States. Delegate to congress.

136 First election for delegate.

Subsequent elections.

ARTICLE XLV. It is hereby ascertained and agreed between the parties to this treaty, that the United States of America, of which the Confederate States of America were heretofore a part, were, before the separation, indebted and still continue to be indebted to the Cherokee Nation and bound to the punctual payment to them of the following sums, annually, on the first day of in each year, that is to say: It was agreed, by the tenth article of the treaty of the 29th day of December, A. D. one thousand eight hundred and thirty-five, that the sum of two hundred thousand dollars should be invested, by the President of the United States, in some safe and most productive public stocks of the country, for the benifit of the whole Cherokee Nation, in addition to the annuities of the nation theretofore payable, to constitute a permanent general fund and that the net income of the same should be paid over by the President, annually, to such person or persons as should be *paid over by the President, annually, to such person or persons as should be* authorized or appointed by the Cherokee Nation to receive the same, whose receipt should be a full Debt due by the U. S. to the Cherokee Nation.

137

discharge for the amount paid to them, the same interest to be applied annually by the council of the nation to such purposes as they might deem best for the general interests of the people, and it was agreed by the eleventh article of the same treaty that the permanent annuity of ten thou-
138 sand dollars, of the Cherokee Nation, should be commuted for the sum of two hundred and fourteen thousand dollars, and that the same should be invested by the President of the United States as a part of the said general fund of the nation, which thus became four hundred and fourteen thousand dollars. And it was agreed by the tenth article of the same treaty, that the President of the United States should invest, in some safe and most productive public stocks of the country, the further sum of fifty thousand dollars, to constitute a permanent orphans' fund; and that he should pay over the net income of the same, annually, to such person or persons as should be authorized or appointed by the Cherokee Nation to receive the same, whose receipt should be a full discharge for the amount paid to them; which net annual income should be expended towards the support and education of such orphan children of the Cherokees as might be destitute of the means of subsistence. And it was agreed, by the tenth article of the same treaty, that the further sum of one hun-
139 dred and fifty thousand dollars should be invested, by the President of the United States, in some safe and most productive public stocks of the country, for the benefit of the whole Cherokee Nation, which should constitute, in addition to the existing school fund of the nation, a permanent school fund, the net income whereof, the President should pay over, annually, to such person or persons as should be authorized or appointed by the Cherokee Nation to receive the same, whose receipt should be a full discharge for the amount paid to them, and that the interest should be applied annually, by the council of the nation, for the support of common schools and such a literary institution of a higher order as might be established in the Cherokee country, and it was estimated, by the eleventh article of the same treaty, that the then existing school fund of the nation amounted to about fifty thousand dollars which it was thereby agreed should constitute a part of the permanent school fund aforesaid. And it is also further agreed, between the said parties to this treaty, that the United States of America, while the said Confederate States were States of the said United States did in-
140 vest the whole of the said several principal sums of money, except the sum of five thousand dollars, in stocks of the States hereinafter named, and of the United States, to the amount hereinafter named, in each, that is to say:

Investment of the principal sums in stocks.

Permanent general fund.

The permanent general fund of the nation:

In seven per cent. stock of the State of Florida, seven thousand dollars, ($7,000.)

In six per cent. stock of the State of Georgia, one thousand and five hundred dollars, ($1,500.)

In five per cent. stock of the State of Kentucky, ninety-four thousand dollars, ($94,000.)

In six per cent. stock of the State of Louis'ana, seven thousand dollars, ($7,000.)

In six per cent. stock of the State of Maryland, seven hundred and sixty-one [dollars] and thirty-nine cents, ($761 39.)

In six per cent. stock of the State of Missouri, fifty thousand dollars, ($50,000.)

In six per cent. stock of the State of North Carolina, twenty thousand dollars, ($20,000.)

141 In six per cent stock of the State of South Carolina, one hundred and seventeen thousand dollars, ($117,000.)

In five per cent. stock of the State of Tennessee, one hundred and twenty-five thousand dollars, ($125,000.)

In six per cent. stock of the State of Tennessee, five thousand dollars, ($5,000.)

And in six per cent. stock of the State of Virginia, ninety thousand dollars, ($90,000.)

Making the whole capital, so invested, five hundred and seventeen thousand two hundred and sixty one dollars and twenty-nine cents; the net annual income whereof was, and is, twenty eight thousand nine hundred and fourteen dollars and ninety-one cents.

Permanent orphans' fund.

The permanent orphans' fund:

In six per cent. stock of the State of Virginia, forty-five thousand dollars, ($45,000.)

The net annual income whereof was, and is, two thousand and seven hundred dollars; leaving the sum of five thousand dollars uninvested, and which still so remains.

Permanent school fund.

142 The permanent school fund:

In seven per cent. stock of the State of Florida, seven thousand dollars, ($7,000.)

In six per cent. stock of the State of Louis'ana, two thousand dollars, ($2,000.)

In five and a half per cent. stock of the State of Missouri, ten thousand dollars, ($10,000.)

In six per cent. stock of the State of Missouri, five thousand dollars, ($5,000.)

In six per cent. stock of the State of North Carolina, twenty-one thousand dollars, ($21,000.)

In five per cent. stock of the State of Pennsylvania, four thousand dollars, ($4,000.)

In six per cent. stock of the State of *the* South Carolina, one thousand dollars, ($1,000.)

In six per cent. stock of the State of Tennessee, seven thousand dollars, ($7,000.)

In the United States six per cent. loan, of 1847, five thousand eight hundred dollars, ($5,800.)

And in six per cent. stock of the State of Virginia, one hundred and thirty-five thousand dollars, ($135,000.)

143 Making the whole capital, so invested, of the said permanent school fund, one hundred and ninety-seven thousand eight hundred dollars, the net annual income of whereof was and is eleven thousand eight hundred and forty-eight dollars.

All of which stocks, the said United States now and do still continue to hold or ought to have in their hands.

Interest due on the principal sums and arrearages thereof.

And it is also hereby ascertained and agreed between the parties to this treaty that there will be due to the Cherokee Nation, on the first day of January, in the year of our Lord one thousand eight hundred and sixty-two, for and on account of the said annually accruing interest, on the said principal sums and of arrearages thereof, the sum of sixty-five thousand six hundred and forty-four dollars and thirty-six cents, as follows, that is to say: For the installments of interest on the permanent general fund, as invested, for July, 1860, and January and July, 1861, forty-three thousand, three hundred and seventy-two dollars and thirty-six cents, ($43,372 36.)

144 For the installments of interest on the permanent orphan fund, as invested and uninvested, for July, 1860, and January and July, 1861, four thousand five hundred dollars, ($4,500.)

For the installments of interest on the permanent school fund, as invested, for July, 1860, and January and July, 1861, seventeen thousand seven hundred and seventy-two dollars, ($17,772.)

The C. S. assume the payment for the future of the interest and arrearages.

And it not being desired by the Confederate States that the Cherokee Nation should continue to receive these annual sums of interest, or the said arrearages, from the Government of the United States, or otherwise have any further connection with that Government, therefore the said Confederate States of America, do hereby assume the payment, for the future, of the annual interest on the said sum of five thousand dollars, part of the permanent orphan fund, which was never invested, and on so much and such parts of said principal sums as having once been invested, may now be in the hands of the United States uninvested, and also of the annual interest on so much and such

145 parts of the said several principal sums as may have been invested in stocks of the United States, or in the bonds or stocks of any of the States other than the said Confederate States; and do agree and bind themselves regularly and punctually hereafter, on the first day of July, in each and every year, to pay the same; and they do also agree and bind themselves to pay to the treasurer of the Cherokee Nation, immediately upon the complete ratification of this treaty, the said sum of sixty-five thousand and six hundred and forty-four dollars and thirty-six cents for such interest and arrearages now due, and which will be due on the first day of January, A. D. one thousand eight hundred and sixty-two, as are above stated.

Also the duty of collecting and paying over the money accruing from the bonds of the states of this confederacy, held by the U. S. as trustee.

And the said Confederate States of America do hereby assume the duty & obligation of collecting and paying over, as trustees, to the said Cherokee Nation, all sums of money not hereby agreed to be assumed and paid by them, accruing whether from interest or capital of the bonds of the several states of the confederacy, now held by the Government of the United States as trustee for the Cherokee

146 Nation, and the said interest and capital, as collected, shall be paid over to the said Cherokee Nation.

And the said Confederate States will request the several States of the confederacy, whose bonds are so held, to provide, by legislation or otherwise, that the capital and interest of such bonds shall not be paid to the Government of the United States, but to the government of the Confederate States in trust for the said Cherokee Nation.

Request to the states of this confederacy to pay their said bonds to the C. S., in trust for the Cherokee Nation.

And the said Confederate States of America do hereby guarantee to the said Cherokee Nation the final settlement and full payment, upon and after the restoration of peace and recognition of their independence, as of debts in good faith and conscience as well as in law, due and owing on good and valuable consideration by the said Confederate States, and other of the United States, jointly, before the cecession of any of the states, of any and all parts of the said several principal sums of money, which may have remained uninvested in the hands of the United States, or which may have been again received by
147 them after investment, and may now be held by them, and do also guarantee to the said Cherokee Nation, the final settlement and full payment, at the same period, of the capital of any and all bonds or stocks of any State not a member of the confederacy, and of any and all stocks of the United States in which any of the Cherokee funds may have been invested.

The C. S. guarantee to the Cherokee Nation final settlement & full payment of all the principal sums of money due from the U. S.

ARTICLE XLVI. All the said annual payments of interest and the arrearages shall be applied under the exclusive direction of the legislative authority of the Cherokee Nation, to the support of their government, to the purposes of education, to the maintenance of orphans, and to such other objects for the promotion and advancement of the improvement, welfare, and happiness of the Cherokee people and their descendants as shall, to the legislature seem good, and the same being in accordance with treaty stipulations, and maintaining unimpaired the good faith of the Cherokee Nation to those persons, and in regard to those objects for whom and which it has become trus-
148 tee; and the capital sums aforesaid shall be invested or reinvested with any other monies hereby guaranteed after the restoration of peace, in stocks of the States of the confederacy, at their market price, and in such as bear the highest rate of interest, or shall be paid over to the Cherokee Nation, after reasonable notice, to be invested by its authorities as its legislature may request; and no department or officer of the government of the Confederate States, shall hereafter have power to impose any conditions, limitations, or restrictions, on the payment to the said nation of any [of] said annual sums of interest, or of any arrearages, or in any wise to control or direct the mode in which such moneys, when received by the authorities of the nation, shall be disposed of or expended.

How the annual payments of interest, and the arrearages to be applied.

Investment of the capital sums.

No conditions or restrictions to be imposed on the payment of interest, &c., to the Cherokees.

ARTICLE XLVII. Whereas, by the treaty of the twenty-ninth day of December, A. D. one thousand eight hundred and thirty-five, the United States of America, in consideration of the sum of five hundred thousand dollars, part of the *of the* sum of five millions of dollars, agreed by
149 that treaty to be paid to the Cherokee Nation for the

Land sold by the U. S. to the Cherokees.

cession of all their lands and possessions east of the Mississippi River, did covenant and agree to convey to the Cherokees and their descendants, by patent in fee-simple, the certain tract of land between the State of Missouri and the Osage reservation; the boundary line whereof it was provided, should begin at the southeast corner of the said Osage reservation, and run north along the east line of the Osage lands, fifty miles, to the northwest corner thereof; thence east to the west line of the State of Missouri; thence, with that line, south fifty miles, and thence west to the place of beginning; which tract of country was estimated to contain eight hundred thousand acres of land; and whereas the same has been seized and settled upon by lawless intruders from the Northern States, and may become totally lost to the Cherokees: Now, therefore, it is further hereby agreed between the parties to this treaty, that, in case the said tract of country should be ultimately lost to the Cherokees by the chances of war, or the terms of a treaty of peace, or otherwise, the Confederate States of America, do assure and guarantee to the Cherokee Nation the payment therefor of the said sum of five hundred thousand dollars, with interest thereon, at the rate of five per cent. per annum from the said twenty-ninth day of December, A. D. one thousand eight hundred and thirty-five, and will either procure the payment of the same by the United States, or pay the same out of their own treasury after the restoration of peace.

Boundaries.

Settled on by intruders from the Northern States.

Payment for the land, should it be lost to the Cherokees, guaranteed to them by the C. S.

150

ARTICLE XLVIII. At the request of the authorities of *of* the Cherokee Nation, and in consideration of the unanimity and promptness of their people in responding to the call of the Confederate States for troops, and of their want of means to engage in any works of public utility and general benefit, or maintain in successful operation their male and female seminaries of learning, the Confederate States do hereby agree to advance to the Cherokee Nation, im'ediately after the ratification of this treaty, on account of the said sum to be paid for the said lands mentioned in the preceeding article, the sum of one hundred and fifty thousand dollars, to be paid to the treasurer of the nation, and appropriated in such manner as the legislature may direct, and to hold in their hands, as invested for the benefit of the said nation, the further sum of fifty thousand dollars, and to pay to the treasurer of said nation, interest thereon, annually, on the first day of July, in each year, at the rate of six per cent. per annum, which shall be sacredly devoted to the support of the said two seminaries of learning, and to no other purpose whatever.

Advancement to the Cherokee Nation after the ratification of this treaty.

151

ARTICLE XLIX. It is further ascertained and agreed by and between the Confederate States and the Cherokee Nation that the treaty of the sixth day of August, A. D. one thousand eight hundred and forty-six, was negotiated and concluded with the United States by three several parties, that is to say, the Cherokee Nation, by delegates appointed by its constituted authorities; that portion of the nation known as the "treaty party," being those who made, and those who agreed to the treaty of the year one thousand

Treaty of the 6th Aug. 1846, with the U. S. negotiated and concluded with three parties, to wit, the Cherokee Nation, the "treaty party," & the "Western Cherokee" or "old settlers."

eight hundred and thirty-five, and the "Western
152 Cherokees," or "old settlers," being those who had removed west prior to the date of that treaty, and were then residing there. That the said three parties, by their delegates, after the making of the said treaty of the year one thousand eight hundred and forty-six, borrowed from Corcoran and Riggs, bankers in the City of Washington, the sum of sixty thousand dollars, upon agreement, endorsed by the Secretary of War, by which the same was to be repaid, with interest, when the moneys payable under said treaty should be appropriated, as follows, that is to say: twenty-five thousand dollars by the treaty party, twenty thousand dollars by the Western Cherokees or old settler party, and fifteen thousand dollars by the Cherokee Nation.

Money borrowed by the three parties from Corcoran & Riggs, bankers, of Washington City.

That, at the session of Congress next after the making of that treaty, the sum of twenty-seven thousand dollars, for the Cherokee Nation, was appropriated under the eighth article of the same, and the sum of one hundred thousand dollars under the sixth article, for the treaty party; but no appropriation was made for the Western Cherokees or old
153 settler party, under the fourth article, (whereunder only, any moneys were payable to them,) the amount due them and which was to be wholly paid, per capita, under that article, not having as yet been ascertained; that consequently the sum borrowed, as aforesaid, with the accrued interest, was repaid out of the two appropriations aforesaid, one-half of the principal and interest which should have been paid by the Western Cherokees or old settler party being deducted from, and paid out of the appropriation made for, each of the others, and there being thus paid out of the moneys so appropriated under the eighth article, for various purposes for the whole nation, over and above its proportion, the sum of ten thousand three hundred dollars, and out of the moneys appropriated under the sixth article, for those of the treaty party, who had sustained losses and damage in consequence of the treaty of the year one thousand eight hundred and thirty-five, over and above the proportion of that party, a like sum of ten thousand three hundred dollars; that when, afterwards, the amount ascertained to be due to the Western Cherokees or old
154 settlers, under the fourth article, was appropriated, the whole amount was paid to, and distributed among them per capita, and no part of the sum so advanced for them out of the other & previous appropriations, was reserved, nor has any part thereof whatever hitherto been reimbursed to those entitled to receive the same, by the Western Cherokees, or by the United States or otherwise howsoever.

Appropriation of moneys paid under the treaty.

Therefore it is further hereby agreed that the Confederate States will pay, upon the ratification of this treaty, to the Cherokee Nation, the sum of ten thousand three hundred dollars, and will also appropriate, and place in the hands of the agent for the Cherokees the further sum of ten thousand three hundred dollars, to be distributed among the claimants of the treaty party, provided for by the sixth article of the said treaty, or their legal representatives under

Payments agreed to be made by the C. S. to be distributed among the claimants of the treaty party.

the laws of the nation, in such proportion as it shall be certified to him by Stand Watie, the only surviving member of the committee of five appointed under that article to audit such claims, that it ought in accordance with the allowances made by the committee to be distributed among
155 them.

Payments for arms taken from the Cherokees.

And it was agreed by the said eighth article of the said treaty of the year one thousand eight hundred and forty-six, that of the sum of twenty-seven thousand dollars provided thereby to be paid to the Cherokee Nation, the sum of five thousand dollars should be equally divided among all those whose arms were taken from them previous to their removal west by order of an officer of the United States, and of that sum of five thousand dollars, three thousand three hundred dollars was applied to the payment in part of the proportion of the money borrowed as aforesaid, due by the Western Cherokees or old settler party, and as the authorities of the nation declined to receive the residue of said sum of five thousand dollars, it being but one thousand seven hundred dollars, and that residue never was paid by the United States and still remains due by them: Therefore it is hereby further agreed that the Confederate States will also pay, upon the ratification of this treaty, to the treasurer of the Cherokee Nation, the further sum of one thousand seven hundred dollars, making with the said sum of ten
156 thousand three hundred dollars, the sum of twelve thousand dollars; and that out of the same, the sum of five thousand dollars, shall by the authorities of the nation, be distributed among those persons, and their legal representatives, whose arms were taken from them as aforesaid; and that any part of that sum finally remaining undistributed, together with the residue of seven thousand dollars shall be used and appropriated in such manner as the national council shall direct.

The C. S. to assume the payment upon the ratification of peace, of all claims and demands of the Cherokees against the U. S.

ARTICLE L. It is hereby further agreed that all claims and demands against the Government of the United States, in favor of the Cherokee Nation, or any part thereof, or of any individuals thereof, and which have not been satisfied, released, or relinquished, arising or accruing under former treaties, shall be investigated, upon the restoration of peace and be paid by the Confederate States, which do hereby take the place of the United States, and assume their obligations in that regard.

Certain provisions of the treaties of the Cherokee Nation with the U. S. continued in force.

ARTICLE LI. It is further agreed between the parties that all provisions of the treaties of the Cherokee
157 Nation with the United States, which secure or guarantee to the Cherokee Nation, or individuals thereof, any rights or privileges whatever, and the place whereof is not supplied by, and which are not contrary to the provisions of this treaty, and so far as the same are not obsolete or unnecessary or repealed, annulled, changed, or modified by subsequent treaties or laws, or by this treaty, are and shall be continued in force as if made with the Confederate States.

One youth, a native of the Cherokee Nation, may

ARTICLE LII. In further evidence of the desire of the Confederate States to advance the individual interests of

the Cherokee people, it is further agreed, that the delegate in Congress from the Cherokee Nation, may, with the approbation of the President, annually select one youth, a native of the nation, who shall be appointed to be educated at any military school that may be established by the Confederate States upon the same terms as other cadets may be appointed.

be selected annually to be educated at any military school of the C. S.

And the Confederate States also agree that the same privilege shall be exercised by the delegate from the Choctaw and Chickasaw nations, and the Creek and Seminole nations respectively.

158

Extension of the privileges to the Choctaw and Chickasaw and the Creek and Seminole nations.

ARTICLE LIII. A general amnesty of all past offences against the laws of the United States, and of the Confederate States, committed in the Indian country before the signing of this treaty, by any member of the Cherokee Nation, as such membership is defined by this treaty, is hereby declared; and all such persons, if any, whether convicted or not, imprisoned or at large, charged with any such offence, shall receive from the president full and free pardon and be discharged.

General amnesty declared.

ARTICLE LIV. A general amnesty is hereby declared, in the Cherokee Nation; and all offences and crimes committed by a member or members of the Cherokee Nation against the nation, or against an individual or individuals, are hereby pardoned, and this pardon and amnesty, shall extend as well to members of the nation now beyond its limits as to those now resident therein.

159

ARTICLE LV. This treaty shall take effect and be obligatory upon the contracting parties from the seventh day of October, in the year of our Lord one thousand eight hundred and sixty-one, whenever it shall be ratified by the general council of the Cherokee Nation, and by the provisional president and congress, or the president and senate of the Confederate States, and no amendment shall be made thereto by either, but it shall be wholly ratified or wholly rejected.

When this treaty to take effect.

In perpetual testimony whereof the said Albert Pike as commissioner, with plenary powers on the part of the Confederate States, doth now hereunto set his hand and affix the seal of his arms, and the said principal and assistant principal chiefs, executive councillors, and special commissioners on the part of the Cherokee Nation, do hereunto set their hands and affix their seals.

[L.S.]

160

Thus done and interchanged in duplicate at the place, in the year, and on the day in the beginning hereof mentioned.

ALBERT PIKE,
Commissioner of the Confederate States to the Indian Nations west of Arkansas.
JNO. ROSS, *Principal Chief.*
J. VANN, *Assistant Chief.*
JAMES BROWN, *Executive Councillor.*
JOHN DREW, *Executive Councillor.*
WILL. P. ROSS, *Executive Councillor.*
LEWIS ROSS, *Commissioner C. N.*
THOMAS PEGG, *Commissioner C. N.*
RICHARD FIELDS, *Commissioner C. N.*

Signed, sealed, and delivered in presence of us—
W'M QUESENBURY,
Secretary to the Commissioner.
E. RECTOR,
Superintendent Indian Affairs Confederate States.
W. WARREN JOHNSON.
GEO. M. MURRELL.

161 *Ratification.*

Dec. 11, 1861. Ratification by congress.

Resolved, (two-thirds of the congress concurring,) That the congress of the Confederate States of America do advise and consent to the ratification of the articles of the treaty made by Albert Pike, commissioner of Confederate States to the Indian nations west of Arkansas, in behalf of the Confederate States, of the one part, and the Cherokee Nation of Indians, by its principal and assistant principal chiefs, executive councillors, and commissioners, for that purpose only authorized and empowered, of the other part, concluded at Tahlequah, in the Cherokee nation, on the seventh day of October, in the year of our Lord one thousand eight hundred and sixty-one, with the following:

AMENDMENTS.

Amendments.

I. Add at the end of Article XXXV the following words: "and the Confederate States will request the several States of the Confederacy to adopt and enact the provisions of this article in respect to suits and proceedings in their respective courts."

162 II. Strike out from Article XLIV the following words:

"The same rights and privileges as may be enjoyed by delegates from any territories of the Confederate States to the said house of representatives," and insert in lieu thereof the following words: "a seat in the hall of the house of representatives, to propose and introduce measures for the benefit of the said nation, and to be heard in regard thereto, and on other questions in which the nation is particularly interested, with such other rights and privileges as may be determined by the house of representatives."

III. Strike out from Article XXXIII the following words: "or of a State," and insert in lieu thereof the following words: "or of a State subject to the laws of the State."

NOTE.—The foregoing amendments were subsequently concurred in and adopted by the Cherokee Nation.

163 (Endorsed:) No. 384. Peter J. Holden vs. James F. Joy. Exhibit "G." Treaty between the C. F. States of America & the Cherokee Indians. Filed May 26, 1871. A. S. Thomas, clerk.

164 EXHIBIT "H."

The United States of America to all to whom these presents shall come, greeting:

Whereas, by the 17th article of the treaty concluded on the 19th day of July, 1866, between the commissioners on the part of the United States and certain delegates of the Cherokee Nation, as ratified on the 11th day of August, 1866, it is stipulated as follows:

"The Cherokee Nation hereby cedes in trust to the United States the tract of land in the State of Kansas, which was sold to the Cherokees by the United States under the provisions of the second article of the treaty of 1835; and also that strip of land ceded to the nation by the fourth article of said treaty which is included in the State of Kansas and the Cherokees consent that said lands may be included in the limits and jurisdiction of the said State," the said article further stipulating that the lands therein "ceded shall be surveyed as the public lands of the United States are surveyed under the direction of the Commissioner of the General Land Office, and shall be appraised by two dis-
165 interested persons, one to be designated by the Cherokee national council and one by the Secretary of the Interior, and in case of disagreement, by a third person, to be mutually selected by the aforesaid appraisers. The appraisement to be not less than an average of one dollar and a quarter per acre, exclusive of improvements;"

And, whereas, the aforesaid article of the treaty further stipulates that the Secretary of the Interior shall, from time to time, as such surveys and appraisements are approved by him, after due advertisements for sealed bids, sell such lands to the highest bidders for cash, in parcels not exceeding one hundred and sixty acres, and at not less than the appraised value: *Provided*, That whenever there are improvements of the value of fifty dollars made on the lands, not being mineral, and owned and personally occupied by any person for agricultural purposes at the date of the signing hereof, such person so owning and in person residing on such improvements, shall, after due proof, made under
166 such regulations as the Secretary of the Interior may prescribe, be entitled to buy at the appraised value the smallest quantity of land in legal subdivisions which will include his improvements, not exceeding in the aggregate one hundred and sixty acres, the expenses of survey and appraisement to be paid by the Secretary out of the proceeds of sale of said land: *Provided*, That nothing in this article shall prevent the Secretary of the Interior from selling the whole of said lands not occupied by actual settlers at the date of the ratification of this treaty, not exceeding one hundred and sixty acres to each person entitled to pre-emption under the pre-emption laws of the United States, in a body to any responsible party for cash, for a sum not less than one dollar per acre;

And, whereas, by a supplemental article to said treaty, concluded on the 27th day of April, 1868, as ratified on the 10th day of June, 1868, it is agreed by and between Nathaniel G. Taylor, commissioner on
167 the part of the United States of America, and Lewis Downing, H. D. Reese, W'm P. Adair, Elias C. Boudinot, J. A. Scales, Archie Scraper, J. Porum Davis, and Samuel Smith, commissioners on the part of the Cherokee Nation of Indians, that an assignment of the contract made and entered into on the 30th day of August, A. D. 1866, by and between James Harlan, Secretary of the Interior, for and in behalf of the United States of America, of the one part, and the Amer-

ican Emigrant Company, a corporation chartered and existing under the laws of the State of Connecticut, of the other part, and now on file in the Department of the Interior to James F. Joy, of the city of Detroit, Michigan, shall be made; and that said contract, as hereinafter modified, be, and the same is hereby, with the consent of all parties, reaffirmed and declared valid; and that the contract entered into by and between O'ville H. Browning for and in behalf of the United States of the one part, and James F. Joy, of the city of Detroit, Michigan, of the other part, on the 9th day of October, A. D. 1867, and now
168 on file in the Department of the Interior, shall be relinquished and cancelled by the said James F. Joy, or his duly-authorized agent or attorney; and the said first contract, as hereinafter modified, and the assignment of the first contract, and the relinquishment of the second contract are hereby ratified and confirmed whenever said assignment of the first contract and the relinquishment of the second shall be entered of record in the Department of the Interior, and when the said James F. Joy, shall have accepted said assignment and shall have entered into a contract with the Secretary of the Interior to assume and perform all obligations of the said American Emigrant Company under said first-named contract as hereinafter modified, the said modifications of said contract being declared to be—

1. That, within ten days from the ratification of this supplemental article, the sum of seventy-five thousand dollars shall be paid to the Secretary of the Interior, as trustee for the Cherokee Nation of Indians.

169 2. That the other deferred payments specified in said contract shall be paid when they respectively fall due, with interest only from the date of the ratification hereof, the said supplemental article also stipulating that it is further agreed and distinctly understood that under the conveyance of the "Cherokee neutral lands" to the said "American Emigrant Company," with all beneficial interest therein, as set forth in said contract, the said company and their assignees shall take only the *the* residue of said lands after securing to actual settlers the lands to which they are entitled under the provisions of the 17th article, and amendments thereto, of the said Cherokee treaty of Aug. 11th, 1866; and that the proceeds of the sales of said lands so occupied at the date of said treaty by actual settlers shall enure to the sole benefit of, and be retained by, the Secretary of the Interior, as trustee for the said Cherokee Nation of Indians;

And whereas, by an order dated 14th October, 1868, from the Secretary of the Interior, the Commissioner of the General Land
170 Office is directed to cause patent to be issued for the tracts described in a certain list accompanying the said order, and certified by Charles E. Mix, as Acting Commissioner of Indian Affairs, to be a list of lands in townships 30, 31, & 32 south, of range 21, 22, 23, 24, & 25 east of the 6th principal meridian, in the State of Kansas, being portions of the Cherokee neutral lands, to be patented to James F. Joy, esq., under his contract with the Secretary of the Interior of June 8, 1868, agreeable to the provisions of the 17th article of the treaty with the Cherokee Nation of Indians of July 19, 1866, as modified by supplemental article of April 27, '68, reported by order of the Secretary of the Interior, under date of October 12, 1868, all the lands therein described being south of the base line and east of the sixth principal meridian, in the State of Kansas, and designated as follows, to wit:

* * * * * * * *

FIFTH HEAD.

* * * * * * * *

The west half and the southeast quarter of section six, containing four hundred and sixty acres and sixty-three hundredths of an acre.

171

The whole of fractional section seven, containing six hundred and twenty-three acres and thirty-six hundredths of an acre.

The west half of the northeast quarter, the southeast quarter of the southeast quarter, the west half of the southwest quarter, the northeast quarter of the southwest quarter, and the northwest quarter of section eight, containing four hundred acres.

* * * * * * * *

All the tracts described in the foregoing, under the "Fifth head," being in township thirty-one south, of range twenty-five east.

* * * * * * * *

Now, know ye that the United States of America, in consideration of the premises, and pursuant to the order of the Secretary of the Interior and proceedings aforesaid, have given and granted, and by these presents do give and grant unto the said James F. Joy, and to his heirs, the tracts of land above described:

172

To have and to hold the said tracts, with the appurtenances, unto the said James F. Joy, and to his heirs and assigns forever.

In testimony whereof I, Andrew Johnson, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

[L. S.] Given under my hand at the city of Washington, this thirty-first day of October, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third.

ANDREW JOHNSON.

By the President:

By FRANK COWAN, *Secretary.*

J. N. GRAUGHT,
Recorder of the General Land Office.

173

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., October 13th, 1868.

SIR: In compliance with the directions contained in your letter of the 12th instant, I have the honor to inclose herewith a list of 108,169$\frac{79}{100}$ acres of lands, being portions of the Cherokee neutral lands to be patented to James F. Joy, esq., under his contract for said lands, pursuant to the 17th article of the treaty of July 19, 1866, with the Cherokee Nation of Indians, as modified by supplemental article of April 27, 1868.

Very respectfully, your obedient servant,

CHARLES E. MIX,
Acting Commissioner.

Hon. O. H. BROWNING,
Secretary of the Interior.

174

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Oct., 14th, 1868.

SIR: In accordance with the request contained in the enclosed copy of a letter from the Acting Commissioner of Indian Affairs, of the 13th

inst., you will cause patent to be issued for the tracts described in the accompanying list of the Cherokee neutral lands, transmitting the same to this Department for delivery.

Very respectfully, your ob't servant,

O. H. BROWNING, *Secretary.*

The Com'r of the Gen. Land Office.

(Endorsed:) No. 384. Peter J. Holden vs. James F. Joy. Exhibit "H." Patent to James F. Joy. Filed May 26, 1871. A. S. Thomas, clerk.

175 And on this day, to wit, the 26th day of May, 1871, came the said defendants, by their attorneys, and filed in the said clerk's office, this demurrer; which is in words and figures following, to wit:

In the U. S. circuit court for the State of Kansas.

HOLDEN *against* JAS. F. JOY.

The said defendant now comes, by his attorneys, and demurs to the petition filed herein—

1. Because the facts set forth in said petition do not constitute any cause of action against def't.
2. Because the facts set forth in said petition are not sufficient to entitle plaintiff to any relief in a court of equity.
3. Because said petition, if true, shows that plaintiff has a complete & adequate remedy in a court of law.

SIMPSON BLAIR,
Att'ys for Def't.

(Endorsed:) 384. Holden vs. Joy. Demurrer to petition. Filed May 26, 1871. A. S. Thomas, clerk.

176 And afterwards, at a term of the circuit court of the United States, in and for the district of Kansas, begun and held at Topeka, in said district, on Monday, the 22nd day of May, A. D. 1871, there were present the Hon. Samuel F. Miller and Hon. Jno. F. Dillon, judges of said court.

At which term of said court, among other proceedings, the following were had, and appear of record, in words and figures following, to wit:

SATURDAY, *May* 27, 1871.

PETER F. HOLDEN, PL'FF, *vs.* JAMES F. JOY, DEF'T. } 384.

On this 26th day of May, 1871, the plaintiff filed his bill, praying for an injunction in this case, and the defendant appeared, by his counsel, and filed his demurrer to the plaintiff's bill. This cause came on to be heard on the bill of complaint, and the demurrer of the respondent thereto, and was argued by counsel; and the court, on mature consideration, sustains said demurrer.

177 Whereupon, it is ordered that the bill of said complaint be, and the same is hereby, dismissed; and it is further ordered and

decreed, that the respondent go hence without day, and recover of the plaintiff his costs herein expended, taxed at $.

To which judgment, ruling, and decision, the plaintiff, by his counsel, excepted and excepts.

THURSDAY, *June 1st*, 1871.

PETER F. HOLDEN
vs.
JAMES F. JOY. } 384. In equity.

Now, on this day, comes the plaintiff and defendant, respect*fully*, by their attorneys, in open court, and plaintiff, praying an appeal from the judgment of the court heretofore made herein on demurrer to the said plaintiff's bill, and the dismissal thereof, and it is allowed; and the said defendant, by his attorney, C. W. Blair, waives an appeal bond and citation to said defendant.

178 UNITED STATES OF AMERICA,
District of Kansas, ss:

I, A. S. Thomas, clerk of the circuit court of the United States for the district of Kansas, do hereby certify the foregoing transcript to be a true, full, and perfect copy from the record of all the proceedings had in said court in the case of Peter F. Holden, complainant, vs. James F. Joy, defendant.

In testimony whereof I hereunto set my hand and affix the seal of said court, at my office, in Topeka, in said district, this 27th day of July, 1871.

[SEAL.] A. S. THOMAS, *Clerk.*

[5-ct. int. rev. stamp, canceled.]

(Indorsement on cover:) No. 589. Peter F. Holden, appellant, vs. James F. Joy. Kansas C. C. U. S. Filed 26th October, 1871.